

LIFE ESIDIMENI ARBITRATION

**HELD AT: EMOYENI CONFERENCE CENTRE, 15 JUBILEE ROAD,
PARKTOWN, JOHANNESBURG**

DATE: 30th NOVEMBER 2017 DAY

5

SESSION 1 – 3.

BEFORE ARBITRATOR – JUSTICE MOSENEKE

10

WITNESSES:

MR GREGORY WHITTAKER

MR. DANIEL BUDA

ME. LONGISWA VICTORIA NOMZIBANZI 30 NOVEMBER 2017

SESSION 1

ARBITRATOR JUSTICE MOSENEKE: Thank you, you may be seated. Advocate Hassim?

ADV ADILA HASSIM: Good morning Justice Moseneke, we would like to call our expert Actuary Gregory Whittaker.

ARBITRATOR JUSTICE MOSENEKE: Would you put your full names on record?

MR GREGORY WHITTAKER: It's Gregory Angus Whittaker.

ARBITRATOR JUSTICE MOSENEKE: In which language do you want to testify?

MR GREGORY WHITTAKER: English.

10 **ARBITRATOR JUSTICE MOSENEKE:** Do you swear that the evidence that you are about to give, will be the truth and nothing but the truth and if so, please raise your right hand and say so help me God?

MR GREGORY WHITTAKER: So help me God.

ARBITRATOR JUSTICE MOSENEKE: Thank you.

15 **ADV ADILA HASSIM:** Thank you Justice, good morning Mr Whittaker.

MR GREGORY WHITTAKER: Morning.

ADV ADILA HASSIM: Your evidence today is based on a report that has been provided to these proceedings. If we could start at the end, the annexure to your

report and that is your CV and that's with the letterhead Algorhythm, can you tell us what your academic qualifications are?

MR GREGORY WHITTAKER: I hold a Bachelor of Economics Science Degree from the University of the Witwatersrand, I'm a fellow of the Actuarial Society of South Africa, I am a fellow of the Society of the Actuaries in America, I am also a fellow of the Conference of Consulting Actuaries and I am a member of the American Academy of Actuaries.

ADV ADILA HASSIM: And how long have you been practicing as an actuary?

MR GREGORY WHITTAKER: My first actuarial designation was in 2002.

10 **ADV ADILA HASSIM**: And can you tell us about your experience in matters of this nature, in matters concerning calculation of damages?

ARBITRATOR JUSTICE MOSENEKE: Does any party contest the specialist and expert status of this witness?

ADV LILLA CROUSE: From our side not, we accept it thank you Justice.

15 **ADV DIRK GROENEWALD**: We do not thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: You do not what?

ADV DIRK GROENEWALD: We do not dispute that the witness is an expert.

ADV TEBOGO HUTAMO: We accept the CV to be what reflects his expertise to be.

ARBITRATOR JUSTICE MOSENEKE: And the State accepts that Mr Whittaker is an actuary and an expert in the field he will be testifying in?

ADV TEBOGO HUTAMO: In accordance with the CV that's correct.

ADV PATRICK NGUTSHANA: Justice Moseneke his expertise is not placed in dispute by us.

ARBITRATOR JUSTICE MOSENEKE: Very well, proceed, Counsel?

ADV ADILA HASSIM: Thank you Justice Mr Whittaker we can then get to the crux of your testimony which is your report and the title of the report is Actuarial Report on the Life Esidimeni Transfer. Was this report authored by you?

10**MR GREGORY WHITTAKER:** Yes it was.

ADV ADILA HASSIM: And when was it prepared?

MR GREGORY WHITTAKER: I finalised the report on the 21st of November 2017.

ADV ADILA HASSIM: And what was the purpose of this report in broad outline, we will get to the details?

15**MR GREGORY WHITTAKER:** The main purpose of the report is set out in Paragraph 1.4 of my report, in which I was asked to estimate the capitalised value or the present value as at the 1st of April 2016 of the subsidy that the Gauteng Department of Health would have paid to Life Esidimeni in respect of the 143 deceased. So in other words, I was asked to calculate had the Gauteng
20Department of Health continued paying that subsidy to Life Esidimeni, how much would it have cost them.

ARBITRATOR JUSTICE MOSENEKE: Yes I am sure we will revert to that I would like to understand why that is an appropriate starting point for the calculations. Please proceed?

ADV ADILA HASSIM: Thank you Justice, what documents were you provided with in order to prepare this report?

MR GREGORY WHITTAKER: I was provided with Professor Makgoba's report, the Health Ombud his first report and his supplementary report and then I was provided with an electronic data file in respect of the 143 deceased.

ADV ADILA HASSIM: Justice just for clarity, would you like your question to be answered now?

ARBITRATOR JUSTICE MOSENEKE: No as you would expect, I have read and studied the report and I think you should lead the witness. We have to come back to the basis of the computation, less about the calculation and the method and more about what ought to be the starting point for the calculation, but I don't want to interrupt at this stage. I have read the report, it is very, very cogent, but I would rather you lead and we will come back to that.

ADV ADILA HASSIM: Thank you Justice. Can we turn to Section 2 of your report in which you set out the data? Can you tell us what the relevance of the data was to your report?

MR GREGORY WHITTAKER: Well just a summary of the data first, out of the 143 deceased, 96 were male and 47 were female and then the average age at death,

was 55.5 years and the youngest of the deceased was 21.2 years and the oldest of the deceased was 103.

ARBITRATOR JUSTICE MOSENEKE: I am startled by that number and I see it startled you too.

5**MR GREGORY WHITTAKER:** Yes I just queried it because when I was going through the data, I queried whether the date of birth was correct and it was confirmed that it was the correct date of birth, that particular deceased was born on the 1st of January 1914. So that is just a broad summary of the data that I was provided with, but for the purposes of my calculations, the important information to
10extract in terms of projecting in the normal course of events, what the future life expectancy of these deceased would have been, is the gender and the date of birth.

ARBITRATOR JUSTICE MOSENEKE: And the dates would be as at the 1st of April 2016?

MR GREGORY WHITTAKER: Yes that was just chosen as the date of calculation.

15**ARBITRATOR JUSTICE MOSENEKE:** Yes fair enough.

ADV ADILA HASSIM: Then in Section 3, you set out the methodology and in setting out the methodology, you say what assumptions, need to be made that will feature later on in your report. Can you briefly explain that?

MR GREGORY WHITTAKER: So there are 3 ingredients to calculating a
20capitalised value. The first thing is the subsidy, so the annual amount of the subsidy. The second thing is an assumption regarding the chances of survival from

time to time for each of the deceased, so in other words, had their deaths not occurred, what would, we have expected their life expectancy to have been. Lawyers talk about life expectancy and actuaries like to talk about the probabilities of survival from time to time and then the third ingredient is what we refer to as a net discount rate and that is basically something that we used to calculate a present value, so we first project the subsidy into the future in each future year, you multiply it by the chances of being alive in each future year and then you bring that back to a current day value.

ARBITRATOR JUSTICE MOSENEKE: I want to ask you for the first ingredient again. I've got the two, probability of survival and of course the discounted value. The first ingredient is?

MR GREGORY WHITTAKER: The amount of the subsidy, so in other words, what was the subsidy that the Gauteng Department of Health was paying to Life Esidimeni as at 1st of April 2016.

15**ARBITRATOR JUSTICE MOSENEKE:** We will come back to that and debate it further. It's unclear in my own mind, whether the subsidy is an equivalent of what, of earning capacity of sorts? What is it meant to be an equivalent of? In other words, I don't want you to debate I just want to know why would that be an appropriate platform for calculating the rest? Well not calculating the rest. Why is 20that an initial or opening ingredient? As I say again, you don't have to challenge it now. When you get to the end, we can come back to it and debate it more fully. Please continue Counsel?

ADV ADILA HASSIM: Thank you Justice, the witness was just describing the net discount rate, I am not sure whether that was complete, your description of the net discount rate, or if it was, we can continue.

MR GREGORY WHITTAKER: I could cover it in more detail in the latter part of the report.

ADV ADILA HASSIM: Sure thank you. So the first assumption then is the subsidy and that's in Section 4 and the subsidy is the amount that was being paid to Life Esidimeni per patient per day correct?

MR GREGORY WHITTAKER: That's correct, so I extracted that information from Professor Makgoba's report, I have referenced the chapter and page number in which that R320 per patient per day appears.

ADV ADILA HASSIM: Justice I would like us to move onto the crux of it which is actually Section 7 and then an important second assumption is the question of probability of survival or life expectancy and that is in Section 5 and can you tell us how you approached the issue of life expectancy for this particular cohort?

MR GREGORY WHITTAKER: Justice so the starting point is what is the general population life expectancy, so if we looked at the 143 deceased in the absence of a psychiatric condition, what would the general population mortality rate imply in terms of their future life expectancy and we used a demographic model to calculate the normal future life expectancy would have been approximately, well 21.2 years on average, so in other words, given their average age as at 1st of April 2016 in respect of each of the deceased, we calculated what the life expectancy would have

been and then we calculated the average. So the average life expectancy is 21.2 years and that is based on the general South African population mortality rates. So that's just a starting point to which you then need to do some analysis.

ARBITRATOR JUSTICE MOSENEKE: But what does 5.2.4 tell us?

5**MR GREGORY WHITTAKER:** That's just the life expectancy at birth, so that's different to the life expectancy of somebody who is older. As an example, if your life expectancy at birth is say 60 years and now let's say you're now 50 years old, it doesn't mean you only have 10 years left. The life expectancy is longer. The older you get, the greater your expected age of death becomes, so it is referred to as a 10rainbow effect, so you don't use up- you don't have 10 years left, you could perhaps have 20 years left once you have survived to the age of 50.

ARBITRATOR JUSTICE MOSENEKE: And would the number in 5.2.4 have in its belly, the considerations of HIV and Aids in 5.2.2?

MR GREGORY WHITTAKER: All of those estimates, I looked at 3 different 15sources of the population mortality rates for South Africa and each of those 3 sources that I cite, being the rapid mortality surveillance report, the Statistics South Africa estimates and then the demographic model referred to the Thembisa model, all of those give similar life expectancies at birth and for males and females and those include, they are all causes of death, so including HIV and Aids, so when I 20have given you the estimate of 21.2 years as being the future life expectancy, that takes into account deaths from HIV Aids, so all causes of death.

ARBITRATOR JUSTICE MOSENEKE: Very well thank you.

ADV ADILA HASSIM: And that you say is for the general South African population?

MR GREGORY WHITTAKER: Yes.

ADV ADILA HASSIM: How did you adjust it for this cohort?

5**MR GREGORY WHITTAKER:** So if I can refer to Paragraph 5.4 of my report, what I've looked at there, is I have tried to compare the mortality experience of Life Esidimeni from the 1st of October 2011 up until, well I have used a cut-off point of 30 September 2015 so I have looked at a 4 year period from the 1st of October 2011 to the 30th of September 2015 and there was a report that there were 462 deaths over 10the period from the 1st of October 2011 until June 2016. What I assumed for this exercise and it is a conservative assumption, is that the 462 deaths applied over a 4 year period, so once you've got the number of deaths, you need to compare that to how many lives were there at the facility.

ARBITRATOR JUSTICE MOSENEKE: How did you arrive at the number 462?

15**MR GREGORY WHITTAKER:** That is just a number that was reported by- I have quoted from the media report where I think it was the CEO of Life Healthcare mentioned that those were the number of deaths over that period. So once you've got that, you need to relate that to well how many people were in these facilities over the period from October 2011 until the 30th of September 2015, so that one can 20calculate what we refer to as a crude death rate. So in other words, the crude death rate is simply the number of deaths divided by the number of people that were in facilities. So what we did to try and estimate how many people were in these

facilities over that 4 year period, is that we extracted the financial statements of Life Healthcare Group in which they gave statistics in respect of Life Esidimeni and in the financial statements which we have summarised in Table 3, in Paragraph 5.4.1, they give the number of beds that were available for each financial year. Once you have that, you then need to make an assumption as to what was the occupancy rate over those 4 years and I have given a range of results because I don't know what the exact occupancy rate was but I have given a range-

ARBITRATOR JUSTICE MOSENEKE: But the number of beds would come out of their annual report would they?

10 **MR GREGORY WHITTAKER:** Yes, so I've got the number of beds and one then needs to make an assumption as to what was the occupancy rate over that period.

ARBITRATOR JUSTICE MOSENEKE: And the paid patients' days are also presented in the annuals?

MR GREGORY WHITTAKER: They are. You can make a very rough estimate of 15 occupancy rates from paid patients' days but I didn't venture into that because I can't say that with certainty, so I could only really give a range of occupancy rates. They did report a broad occupancy rate, but I'm not sure if that was for the entire group. One couldn't actually get the occupancy rate for Life Esidimeni. So once you've got the number of deaths and the number of lives, you can then calculate the 20 crude death rate, simply the number of deaths divided by the number of lives and then, so we have estimated, given various occupancy rates what was the crude rate of death.

ARBITRATOR JUSTICE MOSENEKE: Help me understand that I see you've got 100%, for instance...

MR GREGORY WHITTAKER: So in other words, so in table 4, paragraph 5.4.4, if the occupancy rate was 100% so in other words if you look at table 3, in the year 5 from October 2011 until September 2012 there were 4165 beds. If I say there was an occupancy rate of 100% then I mean that there were 4165 lives in the facility.

ARBITRATOR JUSTICE MOSENEKE: I see, and it is not playing you down to possibly 90 possibly 80 or possibly 70?

MR GREGORY WHITTAKER: That's correct. So, because in your numerator 10 you've got the number of deaths and your denominator you've got the number of lives. As you decrease the occupancy rate so the crude rate of the deaths goes up.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MR GREGORY WHITTAKER: So I've calculated various ...

ARBITRATOR JUSTICE MOSENEKE: Before you move on help me understand 15 the factor that you in terms of the South African population death rate – it's the one that you dealt with earlier, is it?

MR GREGORY WHITTAKER: Yes.

ARBITRATOR JUSTICE MOSENEKE: Is that the same one?

MR GREGORY WHITTAKER: Yes. So once you crude rates of death for Life 20 Esidimeni patients what you then need to compare that to something...

ARBITRATOR JUSTICE MOSENEKE: Patients divided by number of deaths?

MR GREGORY WHITTAKER: The number of deaths divided by the number of patients. Once you've got that amount one then need to compare that to the general population mortality rate.

ARBITRATOR JUSTICE MOSENEKE: Uhm.

5**MR GREGORY WHITTAKER**: So what we have done there is we have looked at the adult death rate of the South African population from the age of 20 until the age of 89 and we have used that as the base of comparison. That in itself...

ARBITRATOR JUSTICE MOSENEKE: Is that the comparison between the crude death rate and the population death rate?

10**MR GREGORY WHITTAKER**: Yes. So we've got a comparison between the death rate experienced in Life Esidimeni versus the general South African population death rate.

ARBITRATOR JUSTICE MOSENEKE: Of course that issue is important also for other reasons obviously, wouldn't it? In other words, how severe was the rate of
15death within the marathon project I mean the death at Life Esidimeni versus the death in the population and that's the point I would like you to help me understand the variance between the normal death rate on the population and the death rate that occurred at Life Esidimeni. Are you able to talk about it now or ...

MR GREGORY WHITTAKER: I'm not able to it was not something that I looked
20into as my exercise was just looking at the life expectancy of the 143 deceased. So coming up with an estimate for that group what would the...

ARBITRATOR JUSTICE MOSENEKE: Now, what does relative risk mean?

MR GREGORY WHITTAKER: So relative risk means it's the ratio between the crude rates of death and the South African population death rate. So in other words if you say a relative risk of 2.2 that means you have got a 2.2 times higher chance of dying in a particular year.

ARBITRATOR JUSTICE MOSENEKE: Yes.

MR GREGORY WHITTAKER: So, if you take...

ARBITRATOR JUSTICE MOSENEKE: I think the question that I was asking was badly put ... so if you are you say that if you are at Life Esidimeni your risk would be 102.2 whereas ...

MR GREGORY WHITTAKER: If it was the same as the general population it would be 1. So if it is unity if it is 1 if I've got a relative risk of 1 it would have meant that there is no difference between the crude rates of death in the Life Esidimeni facility versus the crude rates of death in the general population. The minute that number goes above 1 it means there is a higher risk of death in that particular population.

ARBITRATOR JUSTICE MOSENEKE: So 2.2 would be 2.2 times the normal rate?

MR GREGORY WHITTAKER: Yes. So in other words if there were a 1 in a 100 chance to die in a particular year there would then be a 2.2 in a 100 chance to die in a particular year.

20**ARBITRATOR JUSTICE MOSENEKE:** I understand that thank you.

ADV ADILA HASSIM: Mr Whittaker on that point have you read professor Magoba's supplementary report? It is relevant I think to the question Justice is putting to you about relevant risk of this population versus the general population.

MR GREGORY WHITTAKER: Prof Magoba actually cited with an international study where they looked at the - I think it is the Walker study which I referenced in my report – where they came to an overall relative risk of 2.2 and that was based on numerous international studies. So they came with the same relative risk for patients.

ARBITRATOR JUSTICE MOSENEKE: So your calculations are then underpinned by international experience?

MR GREGORY WHITTAKER: It does seem to correlate to the international experiences it is certainly within the range.

ARBITRATOR JUSTICE MOSENEKE: Very well thank you.

ADV ADILA HASSIM: In paragraph 5.5 you do have set out international studies and here you are trying to bring it more closer to this population and to the issue of the illness that was suffered by this population group. Can you give us the main point of your findings in this regard?

MR GREGORY WHITTAKER: Justice Moseneke I just want to all I've done there was to summarise various conditions and what the mortality loadings are that applied, but when I refer to mortality loading it is similar to the relative risk and if one says the mortality loading of a 100% so then when one has a 1 in a 100 chance – if the normal chance of death is 1 in a 100 and you apply a 100% extra mortality

loading that means then there is a 2 in a 100 chance of death in a particular population. I've just set out to various loadings that have been that come from various international studies as I relied on a publication it was actually a text book a medical section on life risks international book by Breckenridge and I've made that reference available, but just to get a feel of what the loadings are for various conditions. I've just included that just as a broad check whether we were in the right ballpark in terms of the relative risk that we calculated for the aggregate group.

ARBITRATOR JUSTICE MOSENEKE: Uhm.

ADV ADILA HASSIM: So let's go to that that is in paragraph 5.6 is that correct?
10The way in which you drew the relative to the loadings?

MR GREGORY WHITTAKER: Yes. So paragraph 5.6 well let's start at paragraph 5.6.3 so there as I've mentioned earlier in respect of the 143 deceased the first question that we try to answer is what would the normal life expectancy would have been which is – in other words the general population life expectancy and that would have been estimated as another 21,2 years on average for that group and that's based on just to reiterate on all causes of mortality including HIV Aids. We then looked at a loading of extra mortality loading of 120% which is the same as a saying that the normal chances of death are 2.2 times the normal population and then we examined what is the impact of that assumption of the overall life expectancies. So one applies there 120% loading instead of having a normal general population life expectancy of 21,2 years and that reduces to 14 years. So the impact of applying loading of a 120% is of reduction in normal life expectancy of 7,2 years on average. So here I am just referring to average because we obviously

looked at this on an individual basis and we did the calculation for each deceased and added that up and calculated the average.

ARBITRATOR JUSTICE MOSENEKE: So for individual cases we would need a mortality rate in respect of each individual – isn't that so?

5**MR GREGORY WHITTAKER:** That's correct.

ARBITRATOR JUSTICE MOSENEKE: The tragedy of this case as you know in part of the biggest unhappiness of the Ombud is all about the remarkable paucity if not the absence of records. So it is impossible to individualise the victims of this transfer.

10**MR GREGORY WHITTAKER:** I agree and that's why I went in terms of let's look at the overall the aggregate loading that would apply. So the only thing that I could go with there is the experience of the super-exposing the experience of the Life Esidimeni mortality rates prior to the transfer onto this group in terms of getting some sort of an estimate.

15**ARBITRATOR JUSTICE MOSENEKE:** I understand that methodology. Please proceed.

ADV ADILA HASSIM: Mr Whittaker just on the individualisation point and it will also be comorbidities and the likes.

MR GREGORY WHITTAKER: Yes. Comorbidities like blood pressure ...

20**ADV ADILA HASSIM:** The level of detail that would be required to ...

MR GREGORY WHITTAKER: The level of detail that would be required for a normal person – like for instance I am involved in numerous cerebral palsy matters acting for the state and for plaintiff attorneys and the thing that often comes up in those matters is all these other factors that can also play a role, so for example in a cerebral palsy matter the important determinant is can the child feed themselves can they role [inaudible 31:23] is a very important thing. There are various factors that come into play and it all requires I don't know of any matters that have not gone through the process of being assessed by a specialist position and a whole host of other experts to complete the picture of the diagnosis and then once they've got that they will then come up with some estimate of life expectancy. But even so once you've done that for an individual life expectancy for an individual is not really you can never predict the life expectancy of an individual person. You can do it more accurately for a group.

ARBITRATOR JUSTICE MOSENEKE: Yes. Well what is part of the tragedy here that paucity absence of the records stands in the way of individualised estimation of life expectancy?

MR GREGORY WHITTAKER: Yes.

ARBITRATOR JUSTICE MOSENEKE: Uhm.

ADV ADILA HASSIM: In section 6 you deal with the net discount rate and how you calculated the net discount rate. Can you give us the highlights of this?

MR GREGORY WHITTAKER: The net discount rate is effectively the difference between – let me start again – if we calculate a lump sum what you do is you first

project something into the future and then you bring that back to reflect current money terms. So the theory is that if you are given a sum of money to invest you can beat the rate of inflation and therefore for example if you are providing for let's say an amount of R100 000.00 in a year's time, you have to invest less than a 5R100 000.00 today so as to get there. So the process of discounting reduces the value of things in terms of the future. So the actuarial calculation we will look at the probability of viable multiply with by the amount and then it is discounted. So the important parameter we refer to is the net discount rate and that reflects the difference between the rate of interest and the rate of inflation. So it is net of 10inflation impacts so there is various ways one can set the net discount rate. The first important point to make is that in South Africa there is no legislated net discount rate in this environment so it is determined on a case by case basis generally in the past so I've just given you some examples in paragraph 6.2 of net discount rates that have either been agreed or decided upon for various matters.

15 **ARBITRATOR JUSTICE MOSENEKE:** Well for once actuaries do need to draw from the courts but in fact courts do no more than being guided by actuaries so it is a bit of a round trip isn't it?

MR GREGORY WHITTAKER: It is and often in various medical matters there is often evidences led by economists in the past so it very much depends on the 20approach and who is giving evidence. There is quite a range of discount rates when it comes to various matters. I have just sited some there is of course more examples but I just gave you these so that you can get a feel for what the courts have allowed for.

ARBITRATOR JUSTICE MOSENEKE: And we tend to be a high income jurisdiction?

MR GREGORY WHITTAKER: That's correct.

ARBITRATOR JUSTICE MOSENEKE: And also with a higher inflation of course.

5**MR GREGORY WHITTAKER:** Yes the theory is normally that inflation and returns move in tandem so in low interest in low inflation rate environments your rates of investment is lower and similarly higher inflation environments and in South Africa your rates of attorneys are higher, but the theory is that the gap remains fairly constant. The gap between the two, so what's important for our calculation is the
10gap.

ADV ADILA HASSIM: Now that is really the outcome of the report which is in section 7 after you have done an excursion of examples across the world. Section 7 has 3 tables can you before going into each table in detail can you just explain the purpose of these tables?

15**MR GREGORY WHITTAKER:** So the purpose of the tables is to estimate given the various life expectancies that we have spoken about what would the total present value of the subsidy of the Life Esidimeni of the 143 would have been what would the total amount have been at the that would have been spent and then from that calculate per deceased.

20**ADV ADILA HASSIM:** So in other words and we will go through the detail with what has been saved as a result of each death.

MR GREGORY WHITTAKER: One can look at one can determine that yes.

ADV ADILA HASSIM: And then, can you take us to the tables and explain the differences between 5, 6 and 7?

MR GREGORY WHITTAKER: So table 5 is a net discount rate of 1.5% and then what I have calculated there so have there been a normal life expectancy then there should be – if you don't mind me rounding off – the total present value of this subsidy would have been R322 million which would have implied an average subsidy of R2.25 million per deceased. If you apply a loading of 120% so in other words the estimate life expectancy is another 14 years then the total present value of this subsidy would've been roughly around R324 million which implies an average of about R1.56 million per deceased. And then at a loading of 220% in other words a future life expectancy of another 11,1 years per that group the total present value would have been approximately R182 million and the average per deceased would have been R1.27 million. So those are the results at the net discount rate of 1.5% and then in table 6 if one looks at the results using a net discount rate of 2%...

ARBITRATOR JUSTICE MOSENEKE: Wouldn't it be appropriate to use the different loadings because the loadings have an adverse impact on the probability of survival. When would it be appropriate to select one and not the other?

MR GREGORY WHITTAKER: It is dependent on the in other words which one do you select 120% or 220% as the appropriate loading. It is highly dependent on the assumed occupancy rates – so if you can show that the occupancy rate is closer to

a 100% in those facilities you know from 2011 to 2015 then you would lean towards the 120% loading as opposed to the occupancy rate of 70% which is the 220%...

ARBITRATOR JUSTICE MOSENEKE: So the fluctuating factor there would be the percentage of occupancy?

5**MR GREGORY WHITTAKER:** Yes, because that ultimately determines your crude death rate and that feeds into – once you've got the crude death rate you need to compare that to the general population rate and then from there you know do the sum.

ARBITRATOR JUSTICE MOSENEKE: Yeah and which means the lower the
10occupancy the more adverse

MR GREGORY WHITTAKER: Yes, that's correct.

ARBITRATOR JUSTICE MOSENEKE: If there are fewer people but they die just as much it means that the life expectancy is less?

MR GREGORY WHITTAKER: So, just a simple example – let's say that you had
1510 deaths over a 100 patients that you observed, so that would imply 10%. So now if you change the 100 to 90 so in other words you assume a 90% occupancy rate so 10 divided by 90 is 11,1% that is then a higher rate of death which then implies a lower life expectancy.

ARBITRATOR JUSTICE MOSENEKE: A lower life expectancy?

20**MR GREGORY WHITTAKER:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Oh, I see that, but the occupancy numbers were drawn from the annual report of Life Esidimeni?

MR GREGORY WHITTAKER: Yes. I've got the number of beds and I also extracted the paid patient days from that.

5**ARBITRATOR JUSTICE MOSENEKE:** Yes. The per annum number – what is the [inaudible 53:52] between 4.5 and 4.1?

MR GREGORY WHITTAKER: Well, 4.5 is just the annual amounts that would have been paid...

ARBITRATOR JUSTICE MOSENEKE: ... after the provision for inflation?

10**MR GREGORY WHITTAKER:** Yes. So the R320.00 per day per patient was a figure that was in the 2014/2015 financial year we took that as been applicable from the beginning of April 2014 we didn't have the subsidy that has been paid as from the 1st of April 2016.

ARBITRATOR JUSTICE MOSENEKE: Yes.

15**MR GREGORY WHITTAKER:** So what we did we just inflated that for 2 years so that we've got a reasonable you know what we've used is just an estimate from South Africa. They produce a medical index we adjusted it with the medical ...

ARBITRATOR JUSTICE MOSENEKE: This is where the 131 / 140 comes from?

MR GREGORY WHITTAKER: Yes. So the annual subsidy that we used for the
20calculation was R131 940.00 per year.

ADV ADILA HASSIM: ...and so, table 6 is the same method that you've just described except it is at the rate of 2.0%?

MR GREGORY WHITTAKER: Yes. Justice just so you can see by increasing the discount rate so the results are reducing.

5**ADV ADILA HASSIM:** So to bring it down to a very basic and simple conclusion those numbers in the average per deceased column is the amount of money that would have been spent on the deceased if the deceased had survived?

MR GREGORY WHITTAKER: Yes, that's correct.

ARBITRATOR JUSTICE MOSENEKE: ...and the money saved in other words not
10spent comes to the initial question when we started – why would that have been an appropriate way to access failed reasonable compensation?

ADV ADILA HASSIM: Justice, before the witness answers it – it's related to – it is by legal argument to some extent and this calculation is meant to assist the proceedings in relation to constitutional damages in particular and so the basis and
15in argument obviously extensive argument would be made by the difficulties and making such calculation – and the thumb suck and the nature of natural damages this has been provided in order to say well maybe there is a way that we can base it on real figures and understand what this money and amount has meant. So it is a legal argument...

20**ARBITRATOR JUSTICE MOSENEKE:** I understand it will probably a flaw and not a setting – I understand what you are saying so one has to understand why one chooses one platform and not another. Some of these I can anticipate but what I

want to understand from the actuary what the results represents? Does it really represents what the state would have otherwise have paid discounted for present value – is that right?

MR GREGORY WHITTAKER: Yes, that's right.

5**ARBITRATOR JUSTICE MOSENEKE:** And you say Counsel that is a matter that would have to be argued later legally? By that is an appropriate platform of calculation.

ADV ADILA HASSIM: That is so.

ARBITRATOR JUSTICE MOSENEKE: I hear the point. So the witness can't take
10it much further than the brief that has been given to the actuary?

ADV ADILA HASSIM: That's correct. That was the purpose of the report and I don't think the witness can take it any further but if you would like to add it he may certainly do so but these calculations are based on a request.

ARBITRATOR JUSTICE MOSENEKE: Yeah, which should be followed by full
15argument on why this much or it may not be enough appropriate platform for calculation – no, okay. Is there anything you would like to say about this exchange Mr Whittaker?

MR GREGORY WHITTAKER: I can't say anything.

ARBITRATOR JUSTICE MOSENEKE: You are not obliged to I just wondered
20whether ...

MR GREGORY WHITTAKER: It's a legal argument.

ARBITRATOR JUSTICE MOSENEKE: Look this is [inaudible 1:01:38]

ADV ADILA HASSIM: In some senses

ARBITRATOR JUSTICE MOSENEKE: And we do in the course calculate quite often damages of people [inaudible 1:01:51] disadvantage of illness in ways that we've found in some of these cases provided you have all of the data available there is usually strings of medical reports that helped everybody. Firstly to typify the claimant ailment wise and then secondly all of those feed into were there any pathologists and then threatened life expectancy some that we don't have and therefore I understand the difficulty that we are confronted with here. It might be a legal argument maybe I should not put it to you. The last thing that I want to know is you have for instance in 7.5 supported a particular preferred net discount rate, but you've said nothing about the preferred loading given the data that you counted from the annual report and the earnings from the hospital.

MR GREGORY WHITTAKER: I think my preferred loading was ...

15 **ARBITRATOR JUSTICE MOSENEKE:** 100 or 90 or 80 or 70?

MR GREGORY WHITTAKER: Based on the patient beds and just very roughly one can come close to a 100% but I can't say with certainty that the amounts I gave was the range. If we knew the argument was the rate was around 100% for those 4 years then certainly I can support the loading of a 120% based on this analysis but ...

ARBITRATOR JUSTICE MOSENEKE: By which event we would still be dealing with a 1.2...

GREGORY WHITTAKER: So the effect is you are look at between 1.5 million rand versus 1.2 million. So that is the range that, you know, that I came to.

ARBITRATOR JUSTICE MOSENEKE: Ja, but future life expectancy would then be as one sees in or in any or all of the tables would be 21.2 additional years.

GREGORY WHITTAKER: That is the – that would be the normal life expectance. In other words without any...

ARBITRATOR JUSTICE MOSENEKE: If you would offer 100%.

GREGORY WHITTAKER: No, no, no. So the if you were up to a hundred percent occupancy rate then the appropriate loading would be hundred and twenty percent. So it would be the additional fourteen years. I just gave you the comparison so if there was no...

ARBITRATOR JUSTICE MOSENEKE: Normal is [Crosstalk 1:04:53]...

GREGORY WHITTAKER: Normal that is what I was referring to yes.

15 **ARBITRATOR JUSTICE MOSENEKE:** I understand that thank you for clarifying that. Council?

ADV ADILA HASSIM: Justice, I don't have any further question for the witness. I would just like to thank MR Whittaker for making yourself available to these proceedings and for your work here and effort in producing the report and for having
20 done so pro-bono. Thank you.

ARBITRATOR JUSTICE MOSENEKE: Who is DR Kelly Ebba?

GREGORY WHITTAKER: It is the cousin of my wife.

ARBITRATOR JUSTICE MOSENEKE: Was there any influence in your actual career?

GREGORY WHITTAKER: Not in my actual career but a big influence in my life
5yes.

ARBITRATOR JUSTICE MOSENEKE: Well, I must thank those for doing pro-bono in a matter of this character. Any further questions or are you done council? Ok very well, adv Crouse?

ADV LILLA CROUSE: Thank you, Justice from our side we don't have any
10questions.

ARBITRATOR JUSTICE MOSENEKE: Advocate Groenewald?

ADV DIRK GROENWALD: Thank you, Justice. From our side we also do not have any questions for the witness.

ARBITRATOR JUSTICE MOSENEKE: Evidence leader?

15**PATRICK NGHUTSANA:** No questions Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Council, for the state?

ADV TEBOGO HUTAMO: Thank you, Justice. Good morning MR. Gregory Whittaker.

GREGORY WHITTAKER: Good morning.

ADV TEBOGO HUTAMO: You have just mentioned that your calculations in relation to the hundred and forty three people who have died?

GREGORY WHITTAKER: That is correct.

ADV TEBOGO HUTAMO: And this people were accommodated at Life Esidimeni?

5**GREGORY WHITTAKER:** Yes that is correct.

ADV TEBOGO HUTAMO: Do you know the relationship between the relationship that regulated at the accommodation of this people between Life Esidimeni and the government?

GREGORY WHITTAKER: No I don't.

10**ADV TEBOGO HUTAMO:** The accommodation and care of these patients was on the basis of a contract which was concluded between the government and Life Esidimeni. Will you have any issue with that statement?

GREGORY WHITTAKER: I don't – it wasn't relevant for my calculations I was just, I've just preformed the calculation.

15**ADV TEBOGO HUTAMO:** Do you know if I can put it differently, the transfer of these patients from Life Esidimeni, which ultimately resulted in their death, was as a result off a termination of a contract which was concluded between the government and Life Esidimeni. Were you made aware of that fact?

GREGORY WHITTAKER: I am aware that the contract was terminated from the I
20quotes on the first page of my report from professors Magobes report. So I am aware of it.

ADV TEBOGO HUTAMO: And the rate per patient was also in accordance with the contractual arrangement, are you aware of that?

GREGORY WHITTAKER: The rate that I rely on was taken from Professor Magobos report. So I didn't see the contract between what the actual amount was 5as I mentioned I didn't know what the figure was at April 2016.

ADV TEBOGO HUTAMO: Yes what I'm asking is where you made aware that, that rate that he worked on was on the basis of a contractual arrangement between the government and Life Esidimeni?

ARBITRATOR JUSTICE MOSENEKE: The witness says he gathered or collected 10the data from the ombuds report. So if you can just sharpen the question there, are you asking the witness whether he is aware of the actual terms of the agreement?

ADV TEBOGO HUTAMO: Indeed so.

GREGORY WHITTAKER: I'm not aware.

ADV TEBOGO HUTAMO: And the subsidy which you have made reference to, 15who was entitled to that amount per patient?

ARBITRATOR JUSTICE MOSENEKE: Who do you mean which patient to which patient will the subsidy be paid or which hospital is entitled to it? I'm just edging you to clarify the question.

ADV TEBOGO HUTAMO: If I could put the question differently Justice?

20**ARBITRATOR JUSTICE MOSENEKE:** Certainly.

ADV TEBOGO HUTAMO: There was an amount of three hundred and twenty per day for a patient which was payable to Life Esidimeni, are you aware of that?

GREGORY WHITTAKER: Justice, that figure had come from the – professors Magoboso’s report. So that is just the amount that was mentioned as being the 5subsidy per patient per day.

ADV TEBOGO HUTAMO: And what I’m trying to get from you is in light of the contractual arrangement between the government and Life Esidimeni, the patient – the patients were not entitled to it, to this rate as a matter of right for themselves. Will you dispute that?

10 **GREGORY WHITTAKER:** I’m not quite sure what the – just clarify the question I’m not quite sure.

ARBITRATOR JUSTICE MOSENEKE: I think the council is saying three twenty per day per patient was not an obligation that the government had towards, it wasn’t an entitlement that each patient had. It is what the government was prepared to pay 15to to Life Esidimeni. Is that the question council?

ADV TEBOGO HUTAMO: Ja.

ARBITRATOR JUSTICE MOSENEKE: He is just saying ... the patient had no entitlement to the amount, I think so.

GREGORY WHITTAKER: I think it is more of a legal I question I mean I didn’t have 20sight of the contract.

ADV ADILA HASSIM: Justice the question I not in contrast with the witnesses expertise.

ARBITRATOR JUSTICE MOSENEKE: Yes, you hear the objection council. Do you want to rephrase the question or clarify what you are saying?

5**ADV TEBOGO HUTAMO:** Well, Justice what I'm seeking to get from the witness is whether he were made aware of that fact.

ARBITRATOR JUSTICE MOSENEKE: Were you made aware of the terms on which the state paid Life Esidimeni three hundred and twenty rand per patient?

GREGORY WHITTAKER: No, I didn't see the contract between the parties.

10**ARBITRATOR JUSTICE MOSENEKE:** The answer is the patient hasn't seen the contract himself – the witness has not seen the contract himself.

ADV TEBOGO HUTAMO: You have mentioned that you were not provided with the individual clinical files which would have contained the notice fo the patients. Is that how I understood your evidence?

15**GREGORY WHITTAKER:** Yes that is correct.

ADV TEBOGO HUTAMO: And that made it impossible for you to be able to make a determination on the life expectancy on these patients due to the fact that they had different conditions, or they suffered different conditions?

GREGORY WHITTAKER: ON a individual basis I could not do that, but on a
20aggravate basis I made a estimate which is you know, based on the aggravate experience as I mentioned earlier if you look at the overall death rate of Life

Esidimeni. So on a individual basis no I didn't have the efficient information to do that.

ADV TEBOGO HUTAMO: Do you know which conditions most of the patients suffered from at Life Esidimeni?

5**GREGORY WHITTAKER:** The only place where I found that mentioned in paragraph 5.6.1 of my report where professor Magobo again he provided some of the diagnoses. So he said some of the frequent diagnoses was severe intellectual disability.

ADV TEBOGO HUTAMO: Will you accept that patients with different – patients
10who suffered from different conditions will have different life expectancy?

GREGORY WHITTAKER: Yes, I will expect that.

ADV TEBOGO HUTAMO: Will I be correct to say that patients with suffering from mental illness, their life expectancy are about is reduced between ten and twenty five years compared to normal individuals?

15**AND ADILA HASSIM:** What study or expert evidence do this come from, there is nothing before this proceeding that had been lead contrary to the experts evidence?

ARBITRATOR JUSTICE MOSENEKE: Yes, the council could have pro – he could have read up in the field and that is the question. So it is open to the witness to say I am unaware of the study that you rely on and I don't know the place of the
20question. But he could not be possibly stopped from proofing and saying in councils view this instructions there is a reduction in the probability of survival, so it is a

legitimate question. If the witness is probably qualified to be able to say I agree or I don't agree. Is the question clear to you MR. Whittaker?

GREGORY WHITTAKER: It is clear.

ARBITRATOR JUSTICE MOSENEKE: OK. Very well what is your answer?

5**GREGORY WHITTAKER:** Well,. It depends on the age of the person so I don't know what – you know you could have a ten year reduction that is possible. But I mean it depends on the condition so I don't know. It is a very broad range...

ADV TEBOGO HUTAMO: Mr. Whittaker I put it to you that people with severe mental disorders tend to die earlier as the general population, this is referred to as
10premature mortality. And what I wanted to put to you is that there is a ten to twenty five year expectancy deduction in patients with severe mental disorders.

ARBITRATOR JUSTICE MOSENEKE: The witness has already anticipated that by say please finish the age range, as it depends on the...

GREGORY WHITTAKER: You could have a twenty year old with a life expectancy
15of fifty years and then now its only twenty five years. So you have got to relate that range to an age.

ARBITRATOR JUSTICE MOSENEKE: Ok. Council so I want you to put the question in a way ...

GREGORY WHITTAKER: To qualify that further the twenty five year reduction
20could be for example a several pausy patient at birth and I don't know what the – I don't know what the underlined population is that ahs been referred to. But you

know if you have got a reduction of five years it could be for someone who is not an adult, so generally it is highly dependant on the underlined age. It is a very broad statement to make.

ADV TEBOGO HUTAMO: MR. Whittaker if you had not had regard to the clinical files of this patients, how is your report, how would your report be reliable in the absence of insight to the age of different patients who were cared for in Life Esidimeni?

GREGORY WHITTAKER: Justice as I explained earlier on we have looked at the aggravate mortality experience, so we have got a handle on the average – we superimposed that aggravate mortality experience onto the one hundred and forty four diseased. And that is it – because we don't have as I mentioned earlier we don't have all fo that data.

ARBITRATOR JUSTICE MOSENEKE: Council is it part of your question that they dated all f the ages of the one hundred and forty four?

15 **ADV TEBOGO HUTAMO:** Well, what I'm trying to find out from the witness is whether he did take that into account in his assessment?

GREGORY WHITTAKER: I did take it...

ARBITRATOR JUSTICE MOSENEKE: The witness took the report ...

GREGORY WHITTAKER: .. take into account the individual age of the diseased to which we then supplied the aggravate mortality loading, so within that you might have someone with reduction and life expectancy. Lets say that you has the full

clinical records and you had an assessment and input from the medical experts they might assess one person had a reduction in life expectancy of three years and they might assess somebody else with a life reduction of thirteen years. So but because we are looking or we are interested in a aggravated value we applied the same load 5to each of the disease ages.

ARBITRATOR JUSTICE MOSENEKE: Look at paragraph 2 of the report on page 4.

ADV TEBOGO HUTAMO: Mr. Whittaker I already put it to you that the patients were cared for in the facility on a contractual arrangement between the 10government and Life Esidimeni. What I want to find out from you, do you know for how long were these patients – for how long were they supposed to have been at Life Esidimeni?

GREGORY WHITTAKER: I don't have that, I don't know.

ADV TEBOGO HUTAMO: Where you informed for the fact that some of those 15patients will ordinarily be discharge from the facility if there has been improvement in their condition?

GREGORY WHITTAKER: It is not to the relevant of the calculations that I made, because I simply just calculated what in terms of the existing subsidy capitalised value of that have been in the respect of those one hundred and forty five would be. 20I haven't taken it any further than that so I cant answer that.

ARBITRATOR JUSTICE MOSENEKE: Have they lived over the aggregated life span?

GREGORY WHITTAKER: Yes, ja.

ADV TEBOGO HUTAMO: Well, I just need to get your answer to my question. Where you made aware of that fact, that from time to time there will be made discharged if they would improve, were you made aware of that fact?

5**GREGORY WHITTAKER:** That they would have been discharged if their condition would have improved? No.

ADV TEBOGO HUTAMO: And were you also made aware of the fact that some of the patients were transferred to state facilities for their care?

GREGORY WHITTAKER: Again it wasn't of any relevant to my calculation.

10**ADV TEBOGO HUTAMO:** So will I be correct – will you agree with me if I put it to you that the subsidy was not an entitlement to the patient but rather came into Life Esidimeni?

GREGORY WHITTAKER: I think it is a legal debate.

ADV TEBOGO HUTAMO: Do you disagree or not?

15**ARBITRATOR JUSTICE MOSENEKE:** The witness says that he doesn't know whether it is an entitlement or not. It is a matter for a legal argument, his work is to calculate on the data available to him.

ADV TEBOGO HUTAMO: Justice the witness have to answer the question because his brief was on the calculation on the amounts which was paid to the 20facility. Which from his brief will be the basis of the calculation of their damages. So those should have been...

ARBITRATOR JUSTICE MOSENEKE: So put it to the witness whether he needed the facts for his calculation, you can put it to the witness and he will give you an reply.

ADV TEBOGO HUTAMO: Mr. Whittaker if I can just take you back, for you just to assist us. What was the objective for the brief given to you for the production of those reports?

ADV TEBOGO HUTAMO: So quite simply what had – what would the capitalised value of the subsidy would have been to the one hundred and forty-four deceased if they had remained in the Life Esidimeni facility for the rest of their lives. It is a very narrow focus.

ADV TEBOGO HUTAMO: Where you informed of the fact that the family members of those patients are claiming damages [01:25:33] deaths of these patients?

GREGORY WHITTAKER: Am I aware that they are claiming damages? Yes, I'm aware.

15 **ADV TEBOGO HUTAMO:** Sorry?

GREGORY WHITTAKER: Yes I am. Am I aware that they are claiming damages?

ARBITRATOR JUSTICE MOSENEKE: Yes that is the question.

GREGORY WHITTAKER: Yes the answer is yes.

ADV TEBOGO HUTAMO: Were you requested by the legal representative to prepare a report which will justify the amount of damages which they seek?

GREGORY WHITTAKER: I was requested to do this particular calculation and then the legal argument follow on that. So I don't know what the legal argument will be but these are just the numbers I'm asked to calculate.

ADV TEBOGO HUTAMO: MR. Whittaker if you can just answer the question directly. Like my question to you if you limit yourself to the question. My question to you is , were you made aware, were you not requested to assist the claimants in this regards in the manner of calculating the damages which they seek?

GREGORY WHITTAKER: I was asked by section 27 to perform the calculations set after my report.

10 **ARBITRATOR JUSTICE MOSENEKE:** The answer is quite clear council, I was given a brief, I described it in my report and the calculations are about that brief. You probably want to know what about the other things, was he asked to calculate that and it is the third time he says I've calculated what I've been asked and I've described what I have been asked in my report.

15 **ADV TEBOGO HUTAMO:** Would the content of your report be relevant to the damages sort by the damages of the family members of the diseased patient?

GREGORY WHITTAKER: I assume it would be, I've would be asked to calculate something if a legal argument do not follow on that I assume.

ADV TEBOGO HUTAMO: I don't quite hear you properly.

20 **GREGORY WHITTAKER:** I assume yes that the legal argument will be based on the numbers that I'm asked to calculate. So yes.

ADV TEBOGO HUTAMO: So in a nut shell I just want to find out if it was your report for purposes of justifying the damages sort by the claimants?

GREGORY WHITTAKER: A report was to be of assistance to the arbitrator that's my mandate to be of assistance to the hearing and this is my best estimate of the calculation that I have been asked to perform.

ADV TEBOGO HUTAMO: Mr. Whittaker let talk about the damages sort by the claimers. Can we just respond to those issues?

ARBITRATOR JUSTICE MOSENEKE: You have to put the issues, specify them so that he can answer a specific question.

10**ADV TEBOGO HUTAMO:** The families on behalf of the patients who had passed on seek damages on the government, are you aware of that?

GREGORY WHITTAKER: I'm aware of that.

ADV TEBOGO HUTAMO: So what I'm asking you is that, were you given the fact upon which such damages were sort? I mean are being sort.

15**ARBITRATOR JUSTICE MOSENEKE:** Is that outside of the report?

GREGORY WHITTAKER: Indeed.

ARBITRATOR JUSTICE MOSENEKE: If we can just make it clear to the witness yes. Where you briefed with anything else outside fo your report?

GREGORY WHITTAKER: No, this is the only calculation that I was asked to perform.

ADV TEBOGO HUTAMO: And do you know what amount are they seeking from this proceedings as a form fo damages?

GREGORY WHITTAKER: I'm not sure of the aggravate amount.

ADV TEBOGO HUTAMO: Do you know of any amount, per family?

5**ARBITRATOR JUSTICE MOSENEKE:** I'm not going to stop you yet because your questions should be relevant to the experts testimony, council seem to anticipate that there are other amounts and things that will be claimed which I don't know. This is actually he has prepared a report which has been circulated before hand and it is set outright in the first paragraph the ... of the calculation. So if you ask the witness
10about what other wishes of the claimants are then the questions must be if the question is relevant. But let the witness tell us whether he has been told to do anything else then this report?

GREGORY WHITTAKER: No, Justice this was the only calculation I was requested to do.

15**ARBITRATOR JUSTICE MOSENEKE:** Council?

ADV TEBOGO HUTAMO: If I can just be given a minute Justice. MR. Whittaker lets just go to your report, go to page two of the report, paragraph 1.2. Can you see that?

GREGORY WHITTAKER: Yes I can.

20**ADV TEBOGO HUTAMO:** Can you just read that paragraph for the record?

GREGORY WHITTAKER: It is saying “ *As I understand that under the South African law damages can be claimed in and unlawful death*”.

ADV TEBOGO HUTAMO: And you proceed to outline the various claims from paragraph 1.2.1.

5**GREGORY WHITTAKER:** It is from paragraph 1.2.1 to 1.2.4 ja.

ADV TEBOGO HUTAMO: Yes. Lets go to the first claim which is claimed for funeral expenses. Where you made aware of what amount is being sort under that head?

GREGORY WHITTAKER: No not aware.

10**ADV TEBOGO HUTAMO:** Did you make any calculations?

GREGORY WHITTAKER: The only calculation I was asked to make as set out in paragraph 4 of my report.

ADV TEBOGO HUTAMO: Lets go to 1.2.2 it recall that a claim of loss of support as a result of any disease bread winner. Where there any calculations that you
15made to that sort of claim?

GREGORY WHITTAKER: No, no calculation.

ADV TEBOGO HUTAMO: Lets go to paragraph 1.2.3...

ARBITRATOR JUSTICE MOSENEKE: There shouldn't be to many bread winners here council, institutionalised people.

20**ADV TEBOGO HUTAMO:** Indeed. We are aware of that.

ARBITRATOR JUSTICE MOSENEKE: Yes. So the ask to the witness of whether he made calculations lies in the face of the fact here to institutionalised patients.

ADV TEBOGO HUTAMO: Yes. Well, this sort of claim like it is set out in the report I just want to take the witness through it by virtue of his knowledge or understand of the South African laws pertaining to claims.

ARBITRATOR JUSTICE MOSENEKE: So actually you and me are the lawyers.

ADV TEBOGO HUTAMO: Yes, let's go to 1.2.3, General damage claim for emotional shock, where there any calculations made in that regard?

GREGORY WHITTAKER: No, calculations.

10 **ADV TEBOGO HUTAMO:** Let's go to paragraph 1.2.4 which refers to constitutional damages. What is your knowledge of constitutional damages?

ADV ADILA HASSIM: Sorry Justice I'm not sure what the purpose of the question or the relevant is, although the witness is not a lawyers the witness is a ... who had practice in the are of different sort and all he had to sort here is too say that there are different damages that might be claimed this is the list of damages that I'm aware of. That is simply it, his conclusion in I sin 1.4 which is actually relevant for these proceedings.

ARBITRATOR JUSTICE MOSENEKE: Ja. Well can we clarify the question in a way that remains relevant. Are you asking the witness whether he knows the principals that regulates institutional damages or are you simply asking the witness whether he has calculated or invited to calculated constitutional damages?

ADV TEBOGO HUTAMO: Well, Justice I need to find out from the witness, of his knowledge from what he had indicated from his understanding as the law, that knowledge will give him the basis on which to conduct any calculations if such calculations were performed. So my question to him is whether he is aware or what is his understanding of constitutional damages since...

ARBITRATOR JUSTICE MOSENEKE: For what it is worth ask the witness we are doing now more than what is called heads of damages, you claim for your expenses, you could claim for loss as support as a bread winner, you could claim constitutional damages, you could claim what are loss [inaudible 1:37:52] damages. So that is what you have listed from a [inaudible 1:37:57] point of view quite frankly. Because he is not a lawyer put probe the question I don't want to restrict it durably but lets stay relevant to what this witness has brought to us , it is a calculation that he describes very well in the report.

ADV TEBOGO HUTAMO: Thank you, Justice.

15**ARBITRATOR JUSTICE MOSENEKE:** Of course the state that this people have lived on in the institutions and what would have been the likely aggregate joined active life span of the people and therefore if properly discounted the rate that is acceptable, what would it have cost the state in present day value, that is what the... of it is ?

20**ADV TEBOGO HUTAMO:** Yes.

ARBITRATOR JUSTICE MOSENEKE: Very well, you go ahead.

ADV TEBOGO HUTAMO: Mr. Whittaker if I can refer you to paragraph 1.2 of your report read together with 1.2.4. I just want to find out from you, what is your understanding of that head of damages?

GREGORY WHITTAKER: Justice I just listed the damages that I'm aware of in those four points.

ADV TEBOGO HUTAMO: Yes I'm asking...

GREGORY WHITTAKER: I'm not quite sure what the – I can't provide any legal input to that.

ADV TEBOGO HUTAMO: Did you make any calculations in relation to this head of damages?

GREGORY WHITTAKER: The calculations that I've made was set out in paragraph 1.4 of my report which is what you have just described [crosstalk] is used in legal argument.

ADV TEBOGO HUTAMO: MR. Whittaker if you can just listen to the question and answer it direct if made reference to specific paragraphs can you just direct your question – I mean your answer to that question?

ARBITRATOR JUSTICE MOSENEKE: The question is has he made any calculation on constitutional damages?

ADV TEBOGO HUTAMO: Indeed.

ARBITRATOR JUSTICE MOSENEKE: We all know the answer the answer is no.

ADV TEBOGO HUTAMO: He hasn't provided that answer Justice, he hasn't provided the answer.

ARBITRATOR JUSTICE MOSENEKE: It is self evident, the report is before you. You are asking whether he had made calculations which are outside of his report.

5**ADV TEBOGO HUTAMO:** Justice can we give the witness an opportunity to commit himself to...

ARBITRATOR JUSTICE MOSENEKE: No not durably when it doesn't add to the district before me. He does not seem to have calculated constitutional damages. And why must he be subjected to not once a few times to questions about whether
10he had made the calculation, how does that advance the district between the two parties? We know the answer is no, but [inaudible 01:41:03] do you have any other questions?

ADV TEBOGO HUTAMO: Indeed so Justice if I can proceed?

ARBITRATOR JUSTICE MOSENEKE: Yes please proceed.

15**ADV TEBOGO HUTAMO:** MR. Whittaker in your calculations did you take into account the possibility of the government accommodating those patients from Life Esidimeni at government institutions?

GREGORY WHITTAKER: No.

ADV TEBOGO HUTAMO: Where you made aware of the fact that there are
20government institutions which care for mentally ill patients?

GREGORY WHITTAKER: I wasn't – again the calculation is nearly based on had they remained at Life Esidimeni for the remaining of their expected life span, what would the capitalised value of that have been. So it is a very narrow focus.

ARBITRATOR JUSTICE MOSENEKE: Council time may come when you say the report is un-useful. But this is hardly the target of that criticism, this is actually calculated as instructed.

ADV TEBOGO HUTAMO: Thank you, Justice.

ARBITRATOR JUSTICE MOSENEKE: Please proceed with the questions.

ADV TEBOGO HUTAMO: We will clearly the witness will not be of any assistance on matter which we want to query this report because we find it of no assistance to reclaim which is before this proceedings. So the report was actually prepared in abstract of the relevant facts which should have been given to the witness. And in light of objections which have been raised and without wanting to get this proceedings profound unnecessary we will not pose any questions, we will deal with the report at appropriate time.

ARBITRATOR JUSTICE MOSENEKE: Just make it clear that you are entitled to ask questions all the way provided if relevant and they go to the district before us. If you want to argue with the witness that this report is useless for a specific purpose you must identify the purpose. The council on the other side has said to me that they are going to argue that it is relevant and you are going to argue that it is not relevant. But [inaudible 1:44:10] are higher guns given a brief and a set of facts and they calculate on that set of facts.

ADV TEBOGO HUTAMO: Justice...

ARBITRATOR JUSTICE MOSENEKE: So he can prove the facts but he cant diminish the facts, he is given names of people, the date of birth and told to calculate what it will cost the state in the same institution over their life spam the 5remaining life spam. It is what the calculation is about it will be useful later is a matter for argument.

ADV TEBOGO HUTAMO: Thank you, Justice. MR. Whittaker we would argue at the end of this proceedings that your report was prepared absent and a relevant factional information which would have been necessary for you to produce this 10report.

ARBITRATOR JUSTICE MOSENEKE: MR. Whittaker?

GREGORY WHITTAKER: That is a legal argument.

ARBITRATOR JUSTICE MOSENEKE: The answer is that is a legal argument.

ADV TEBOGO HUTAMO: Yes, and we will also argue that the report was not 15prepared to assist this proceeding in relation to the claims which has been set out on behalf of those who are represented by section 27.

ARBITRATOR JUSTICE MOSENEKE: Are you aware of the claims that ahs been set out on behalf of the claimants by section 27?

GREGORY WHITTAKER: I'm not aware of the minatory announced.

20**ADV TEBOGO HUTAMO:** So you are not aware of the claim set out by section 27 on behalf of their clients?

GREGORY WHITTAKER: I'm not.

ADV TEBOGO HUTAMO: You're not aware?

GREGORY WHITTAKER: No.

ADV TEBOGO HUTAMO: Thank you, I have not further questions.

5**ARBITRATOR JUSTICE MOSENEKE:** The answer is I'm not aware.

ADV TEBOGO HUTAMO: Yes, thank you Justice. That will be the end of our questions.

ARBITRATOR JUSTICE MOSENEKE: Cross examination ahs ended, is there any suggestion though in your cross- examination in this understanding that any of the 10facts set out in the Ombuds report are being contested? No, its not part of your question to the witness?

ADV TEBOGO HUTAMO: Justice there is a statement of claim which claims specific amounts of money on behalf of the claimant. So the witness had already said that he has not been made aware about that statement of claim, he had his 15called before this proceeding to assist those claimants to prove those damages.

ARBITRATOR JUSTICE MOSENEKE: No, there maybe three other actuaries who are coming...

ADV TEBOGO HUTAMO: Lets hope so.

ARBITRATOR JUSTICE MOSENEKE: So you have time for argument as I said 20this is the wrong target. There may be two or three other argument in law which this

witness cannot help us about. My point was in your line of questioning your not questioning the factional premise gleaned from the ombuds report ...

ADV TEBOGO HUTAMO: Justice....

ARBITRATOR JUSTICE MOSENEKE: Let me tell as it might be in your view, your not putting that into dispute are you?

ADV TEBOGO HUTAMO: Well Justice the point which we tried to bring to the attention of this proceedings is that the calculations should be relevant to the damages sort. We accept the ombud report but we are talking about the amounts that the claimants are seeking. So we were under the impression that this witness is called precisely for that purpose to justify those amounts. But it appears that there might be other witnesses who may deal with those aspects. So we argue – or we will argue that this the evidence of this witness will be of irrelevant in relation to those things.

ARBITRATOR JUSTICE MOSENEKE: I understand that you are open to argue that. But the reason for expert evidence is to carve out a field where a particular expert talk about.

ADV TEBOGO HUTAMO: We appreciate that.

ARBITRATOR JUSTICE MOSENEKE: You appreciate that, then that is why the report was circulated and this is why I insist all experts report must be pre circulated and procedure law also insists. So every time an expert comes we know the field is that narrow or wide. But thank you we hear the point, pre examination?

ADV ADILA HASSIM: Questions in pre examination but I noticed that it is time for an adjournment.

ARBITRATOR JUSTICE MOSENEKE: So you want to keep MR Whittaker here on a few questions...

5**ADV ADILA HASSIM:** No just a few questions.

ARBITRATOR JUSTICE MOSENEKE: You would like to take the adjournment now. So MR. Whittaker go and find tea somewhere and we will be back here at mid day. We are adjourned.

SESSION 2

10**ARBITRATOR JUSTICE MOSENEKE:** Thank you, you may be seated. Mr Whittaker you are under your previous oath to tell the truth and nothing but the truth.

MR GREGORY WHITTAKER: Thank you.

ADV ADILA HASSIM: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Counsel.

15**ADV ADILA HASSIM:** Mr Whittaker were you provided with a statement of claim or draft before you prepared your report?

MR GREGORY WHITTAKER: Not before, no not.

ADV ADILA HASSIM: And there was a question to you about life expectancy and calculation of life expectancy – is it correct for us to understand from your evidence
20that it wasn't conducted in a vacuum? In other words you referred – is it correct for

us to take away from the report that you referred to the historical death rate to put it crudely at Life Esidimeni amongst other things?

MR GREGORY WHITTAKER: Yes. So what we do is we superimpose the mortality experience of Life Esidimeni over those 4 years from October 2011 to September 52015. We superimposed that mortality experience onto this group of 143 deceased.

ADV ADILA HASSIM: So, would it be correct for us to understand that this was not conducted in an abstract?

MR GREGORY WHITTAKER: Say again.

ADV ADILA HASSIM: The question was put to you that this calculation was done 10in an abstract – I would like you to explain to us whether you would agree with that view and especially as it relates to life expectancy.

MR GREGORY WHITTAKER: I disagree, because I have looked at the actual mortality experience for the group – you know – where they actually were. So it is not like I've applied some loading. I've based it on the actual mortality experience of 15Life Esidimeni.

ADV ADILA HASSIM: It was also put to you that you were not informed that patients would and could be moved to other state facilities. We've had evidence before these proceedings that the cost per patient per day at other state facilities is as much as R1200.00 or R1400.00 – would that have affected your calculation?

20**MR GREGORY WHITTAKER**: The starting point in my calculation was merely that R320.00 per patient per day. I do remember reading Prof Magoba's report where he

actually gave the cost of some of the institutions which were – I think Weskoppies was quite significantly more expensive. But the basis of my calculation is the R320.00 per patient per day.

ADV ADILA HASSIM: So the logical conclusion is that if you used the other 5 figures it would have been a much higher estimate in your tables?

MR GREGORY WHITTAKER: If you increase your base subsidy then your figure would increase in proportion.

ADV ADILA HASSIM: That's all from me Justice. Thank you Mr Whittaker, I would like to thank you again for your time today, which you have also provided pro bono.

10 **ARBITRATOR JUSTICE MOSENEKE**: Thank you Mr Whittaker again I would like to thank you and no doubt on behalf of many of the claimants who are not even connected to Section 27 for that matter and to do it pro bono is much appreciated in circumStances where money seeMS to be everything and we know it is not, but thank you ever so much and we can do with a friendly visitor [inaudible 04:02] time
15 before you came – so, it was a welcome visit. You are indeed excused.

MR GREGORY WHITTAKER: Thank you.

ARBITRATOR JUSTICE MOSENEKE: You may remain here or go on with your pressing business somewhere else.

MR GREGORY WHITTAKER: Thank you.

20 **ARBITRATOR JUSTICE MOSENEKE**: Thank you. We – before I forget – you are an expert witness Mr Whittaker. We always have a – we have developed a

convention here where every witness have their last words so to speak and I almost omitted to give you that opportunity. You are not obliged to, but if you were so minded you could of course say a few words.

MR GREGORY WHITTAKER: Nope.

5**ARBITRATOR JUSTICE MOSENEKE**: No?

MR GREGORY WHITTAKER: I'm fine.

ARBITRATOR JUSTICE MOSENEKE: Your fine. You choose to be the strict professional the numbers man, right?

MR GREGORY WHITTAKER: I'll stick to that.

10**ARBITRATOR JUSTICE MOSENEKE**: You'll stick to the numbers?

MR GREGORY WHITTAKER: Yes.

ARBITRATOR JUSTICE MOSENEKE: Yes indeed. Thank you.

MR GREGORY WHITTAKER: Thanks.

ARBITRATOR JUSTICE MOSENEKE: Where should I look to? To you up there –
15Counsel Crouse.

ADV LILLA CROUSE: Thank you Justice. Justice Moseneke I would just want to hand in some exhibits in order to just keep the record going. If I could just perhaps read out the exhibit numbers and what they pertain to and then I will call a witness after that.

20**ARBITRATOR JUSTICE MOSENEKE**: Yes.

ADV LILLA CROUSE: The first is ELAH 90 – it's an Affidavit with annexures by Claudia Campbell. ELAH 91 – it's an Affidavit by Nomphilo Nxosi. ELAH 92 – it's an email message from Nomphilo Nxosi on the 4th of November 2015 to the President of South Africa. ELAH 93 – it's the memorandum the families handed over in the march of 16th February 2016. ELAH 94 - it's the memorandum the families handed over in the march of 9th June 2016. ELAH 95 - it's the memorandum the families handed over in the march of 27th October 2016. ELAH 96 – it is the response from Dr Selebano to the march of 7th March 2016. ELAH 97...

ARBITRATOR JUSTICE MOSENEKE: Is the response from the march of the 27th 10of October?

ADV LILLA CROUSE: Yes. It is dated 7th March and it speaks to the march that was just before that. Then then next is ELAH 97 - it's the memorandum that speaks to the memorandum that was handed over on the 9th of June 2016 and it was signed on the 15th of June by Dr Mahnemela. Justice and then ELAH 98 – the 15original is not with you yet, but we will make sure that you will get the original – that is the Affidavit of Nomvula Nomjabe. ELAH 99 – is the Affidavit of Lucky Albertina Mokatse. ELAH 100 – is the Affidavit by Elizabeth Chester. ELAH 101 – is the Affidavit by Modijane Abraham Maditsi and I hope that was pronounced nearly in order

20**ARBITRATOR JUSTICE MOSENEKE:** Yes. Nomaditsi is quite good.

ADV LILLA CROUSE: ELAH 102 – Joseph Nagwenya, Affidavit. ELAH 103 – an Affidavit by Lesetgo Baloi. If I might then – we will deal with all these exhibits,

except for the Affidavits, which I suppose could represent what they are. If I can then call Claudia Campbell to the witness stand – her Affidavit is handed in as ELAH 90 and she will confirm to speak the oath.

ARBITRATOR JUSTICE MOSENEKE: MS Campbell, good morning to you – good afternoon I should say. Will you put your full names on record please?

MS CLAUDIA CAMPBELL: It's Claudia Campbell

ARBITRATOR JUSTICE MOSENEKE: In which language do you prefer to testify?

MS CLAUDIA CAMPBELL: I beg your pardon.

ARBITRATOR JUSTICE MOSENEKE: In which language do you prefer to testify?

10 **MS CLAUDIA CAMPBELL**: English

ARBITRATOR JUSTICE MOSENEKE: In English. I believe that you are going to follow confirmation. Do you confirm that the evidence that you are about to give will be the truth and nothing but the truth and if so, please raise your right hand and say *I so confirm*.

15 **MS CLAUDIA CAMPBELL**: I so confirm.

ADV LILLA CROUSE: Thank you Justice. MS Campbell thank you very much for making yourself available and testifying here today. Is the aircon behind you clouding your hearing?

MS CLAUDIA CAMPBELL: I think it is okay for now.

ARBITRATOR JUSTICE MOSENEKE: Well, my complaint is different – it is blowing hot air, is it not? No? Am I wrong? My application MS Campbell will fill more than I do. Very well, proceed. I am sure we will look after that.

ADV LILLA CROUSE: Thank you very much. MS Campbell, just give us a very brief background where you come from.

MS CLAUDIA CAMPBELL: Okay, there are various elements that have brought me here. Speaking to my qualifications – I have a high certificate, an advanced certificate in counselling and personal communication, an under-graduate degree in social science as well as an honours degree in social science, majoring in psychology. I also have spent 5 years working within an NPO – that is a psycho socio rehabilitation centre. Prior to that I had a 10 year career within corporate strategy, where we focussed on transformation of black economic empowerment specifically and then – importantly as well – I myself am a mental health care user.

ADV LILLA CROUSE: Tell us a little...

15**ARBITRATOR JUSTICE MOSENEKE:** Excuse me – I think I am going to ask you to switch this one off for me please sir. That humming sound is ... oh yah, that's better. Thank you.

ADV LILLA CROUSE: How long were you in the corporate world, did you say 10 years?

20**MS CLAUDIA CAMPBELL:** Yes, 10 years.

ADV LILLA CROUSE: And why did you leave the corporate world?

MS CLAUDIA CAMPBELL: I left the corporate world after about 2 years 3 years after being diagnosed with mental illness and the motivation for me to do that was not because I was unable to capable to stay within that corporate world, but really to find a deeper understanding of the systems of mental health care that had really started to play an immense role in my life...

ADV LILLA CROUSE: Okay, thank you. Can I just ask you to bring – there is a lot of noise in this building – can I ask you to bring your microphone a little closer to your mouth please – if you don't mind. Just pick it up – there we are. Thank you. Ms Campbell, would you mind sharing with this arbitration with your mental health position?

MS CLAUDIA CAMPBELL: No, not at all. In 2008 I experienced a head injury and this caused the triggering of severe post-traumatic stress disorder that led to a few hospitalisations when I was very very ill and throughout the process of therapy and treatment, I gathered a few more diagnosis – bipolar disorder being one and attention deficit hyperactivity disorder being the second.

ADV LILLA CROUSE: We are going to talk a little bit about your experiences, but apparently you are working as what?

MS CLAUDIA CAMPBELL: I work as a Counsellor, volunteer counsellor at the Talisman Foundation, which is a psycho socio rehabilitation centre. It is a residential facilitation centre for people who have psychiatric illness and who are also recovering from addiction. And, in addition to that I also do some event speaking on mental health care awareness

ADV LILLA CROUSE: You, with this background, you came to the arbitration – can you tell the court why did you come to the arbitration hearings?

MS CLAUDIA CAMPBELL: Yes. I have a passion for how systems interact with the affect that people experience themselves and through my history as a mental health care user being in the corporate world and studying. I started to research the issue of the Life Esidimeni tragedy and quite a lot of death from various angles – angles that included the education system, the department of health, the health professions council, private sector – in order to understand how all these systems fit together – where the cogs worked and where they didn't.

10**ADV LILLA CROUSE:** I'm just going to stop you there. You were also in the process of registering as NM(?) – was that part of your preparation for your masters degree?

MS CLAUDIA CAMPBELL: Yes. So, it started out as a brief, delving in what was happening then eventually formed the basis of what I am now using to apply for a
15masters degree.

ADV LILLA CROUSE: You've said in your Affidavit that it was some trepidation that you make the Affidavit, but why are you willing to come and testify here, today?

MS CLAUDIA CAMPBELL: The trepidation that I spoke of there is perhaps because I am not a licensed mental health care provider. Although I work in the
20space I do not have a practice number. Why I decided to do it - is because I feel I have a rounded experience of what mental health care is from an academic point of view, from a systems point of view and very importantly, from a user's point of view.

ADV LILLA CROUSE: Yes. You've heard the Ombudsman the Ombud speaking about pervasive fear – how do you feel about that?

MS CLAUDIA CAMPBELL: Yes, absolutely. So, as I've gone through this process of research I have engaged in many conversations with professionals right across the board – so – from psychiatrists to psychologists to occupational therapists – management of NGOs and facilitation institutions as well as the education system and it struck me over and over that although these professionals really supported the argument that I was bringing forward – all of them were affected by the fear that if they joined the argument they would step forward with me. They would suffer some sort of consequence in terms of their professional status and the same hold true for the conversations that I had with the mental health care users themselves.

ARBITRATOR JUSTICE MOSENEKE: I am sorry, consequence of which kind - that went quickly?

MS CLAUDIA CAMPBELL: In terms of the professionals. Obviously the professionals have licences, they have licences and practice numbers. And I think that speaks very clearly to what has been brought out by both the Ombudsman report and by Dr ThalaThala last week that there is a persuasive sense of fear of repercussion by speaking out and this is exactly what I experience in terms of people's fear that they may lose licences or that their credibility may be put into question.

ADV LILLA CROUSE: And you were saying in terms of the mental health care users?

MS CLAUDIA CAMPBELL: Yes, absolutely. The mental health care users express a constant fear of a stigma that really really is pervasive within their lives – they express, just by virtue of having a diagnosis their credibility is affected. So, it is hard for them to come forward, to acknowledge their illness and to speak in a forum where they feel that they would be given enough credibility to be believed.

ADV LILLA CROUSE: Could you just stop there for a moment please? Justice, it seems my learned friend wants to address the forum.

ARBITRATOR JUSTICE MOSENEKE: Yes.

ADV TEBOGO HUTAMO: Thank you Justice – it is just a point of clarity – we just want to know in what capacity is this witness testifying on?

ARBITRATOR JUSTICE MOSENEKE: It is a relevant question. I would've asked it if you hadn't.

ADV LILLA CROUSE: Thank you Justice – the witness is speaking as a mental health care user as well as somebody who has looked at the systems and we have put her contentions to Dr ThalaThala as well, so it is not foreign contentions that she just wants to explain the contentions and I submit that she should be heard on those issues.

ARBITRATOR JUSTICE MOSENEKE: Did you put her experiences to Dr ThalaThala [inaudible 19:49] – did you mention her name?

MS CLAUDIA CAMPBELL: No, we didn't mention her name, but the contentions in the systems that we want to address. As a mental health care user I suppose – that is not expert it is her own perceptions I suppose.

ARBITRATOR JUSTICE MOSENEKE: Yes, but is she testifying experientially or is she testifying as an expert?

ADV LILLA CROUSE: She's not testifying as an expert.

ARBITRATOR JUSTICE MOSENEKE: Does that answer your question Counsel?

ADV TEBOGO HUTAMO: Yes, it does answer my question, but we just wanted to know – you see our issue is that she is not an expert and then that she will not be of assistance to this proceedings – that is our contention. So, we were under the impression that she is an expert who will assist the arbitration process to get an insight of inside knowledge which we dealt with, but if this witness is a mental health care user herself and she is not a party to these proceedings, surely she has no platform to testify before these proceedings. So, we object to her testimony on that basis.

ARBITRATOR JUSTICE MOSENEKE: How do you deal with that? Are you going to make some election of it Advocate Crouse?

ADV LILLA CROUSE: Yes. Justice what we have put to Dr ...

ARBITRATOR JUSTICE MOSENEKE: It's a matter of procedure for starters [inaudible 21:42] it's a matter of procedure = we've got to make some election.

ADV LILLA CROUSE: Yes Justice, like we've said – she is here in a rounded capacity – having worked with systems, having been a mental care health user and having worked in the field. She said she is busy preparing for her masters degree – that doesn't per se make her an expert, but it does not make her somebody who doesn't need to be listened to. As she has picked up the problems in the system and that should be placed before the court. She relies on experts or she relies on the Ombud, she relies on the health frame work and it's all issues that the court can look at and decide whether there is merit in this argument. To prohibit the witness at this stage to speak I submit will – she has testified to the pervasive fear – nobody else wants to do it, because they've got just too much to lose.

ARBITRATOR JUSTICE MOSENEKE: You know the standard – let's do a few – let's talk a few procedural matters. The first is, the witness can either testify about personal experiences – what they've seen, what they've smelt, what they've heard or they've felt – that is on the one hand of the spectrum and on the other hand of the spectrum is the facts placed before them – we just had a witness now and on account of their training and experience their acquired expertise which entitles them to make inferences – the generic way – in a systemic way and of course would listen to those inferences. In this case – what are we dealing with?

ADV LILLA CROUSE: We are dealing with a witness that tells the court what she has found and shows the court what she has found and I submit there is a foundation for that – for an expert the court is bound by the opinion or the court will look at the opinion. This witness is not giving opinions – this witness is merely telling

the court the facts as they are on the ground so that does not make her an expert that the court will be bound to listen to her opinion.

ARBITRATOR JUSTICE MOSENEKE: Okay, let's assume for a moment that I buy that – I'll give you that – then the usual consideration of relevance comes up immediately – it's a mental health care user, but not at Life Esidimeni – how does that fit in with the requirement of relevance – the evidence?

ADV LILLA CROUSE: The relevance thereof speaks to the Ombuds report by identifying a certain – if I can just get the right word here – you're first a community health worker – the questions were put to Dr ThalaThala, but he could not assist, so we need somebody who has looked at all the systems and just place them before the court and this witness have done so.

ARBITRATOR JUSTICE MOSENEKE: If you and me go and look at the systems of [inaudible 25:20] say an aeroplane's engine, we would've looked at that, but until we know enough we cannot step out there and tell a court...

15 **ADV LILLA CROUSE**: But we could count the engines Justice.

ARBITRATOR JUSTICE MOSENEKE: We could do the minimal stuff.

ADV LILLA CROUSE: Yes.

ARBITRATOR JUSTICE MOSENEKE: Which brings me to the second question which applies in evidence all the time – it's weight – you know the 2 big principles are relevance and weight.

ADV LILLA CROUSE: I would submit ...

ARBITRATOR JUSTICE MOSENEKE: And then comes some medical expert, somebody who is herself a mental health care user – what weight should I place on what she says?

ADV LILLA CROUSE: I would submit...

5**ARBITRATOR JUSTICE MOSENEKE**: Assuming it is relevant – what weight?

ADV LILLA CROUSE: I would submit that weight will be argued at the end of the hearing and the court does not have to decide the weight at this stage. However, I will submit that it is weighty, because her experience has relevance in the community what the mental health care users are experiencing at the moment.

10**ARBITRATOR JUSTICE MOSENEKE**: Yeah, but weight versus [inaudible 26:37] mental health care users, because it is merely an enquiry.

ADV LILLA CROUSE: Justice I would submit that the...

ARBITRATOR JUSTICE MOSENEKE: I'm sure it's got to be interesting, but I've got to ask myself as a tryer of fact (1) is the evidence relevant (2) is it worthy of
15weight? This is standard procedural requirements...

ADV LILLA CROUSE: Justice I will submit that it would have weight, because one of the reasons why we are part of this arbitration is to make sure that such an atrocity and tragedy never happens again and this court will also look at the broader picture of how to make sure that this tragedy never happens again and if by chance
20a mental health care user seen the problem and can bring some solution to the situation, then I submit it is worth listening to.

ARBITRATOR JUSTICE MOSENEKE: Yes. Any further submissions and then we get back to your colleague who raised the objection?

ADV LILLA CROUSE: Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Thank you. Advocate Hutamo, you've heard your colleague's response.

ADV TEBOGO HUTAMO: Justice, what we hear from our learned colleague is that her experience is outside Life Esidimeni – we are dealing with the experiences of those who were accommodated at Life Esidimeni. So, her circumstances of personal experience will surely differ to what other patients went through at Life Esidimeni and it is on that basis that – if she is not an expert she is herself a mental health care user – I submit that she has no platform to appear before this proceedings, because of the relevancy of her testimony.

ARBITRATOR JUSTICE MOSENEKE: Yes. Of course, a court at a tribunal has questioned to listen to evidence and decide in the end if it is relevant and even more importantly if there is any weight placed on it. In other words, the question is whether you shut it out or you hear it and hear argument on its relevance as well as the weight to be put on it. You know the point that I want to make to you – section 3 of the Law's Amendment Act and Evidence – you know what I mean?

ADV TEBOGO HUTAMO: Yes.

ARBITRATOR JUSTICE MOSENEKE: A court can admit any evidence – even hearsay evidence and in the end it should be persuaded about its relevance to its

weight. So – and usually that task is difficult until you have heard the evidence. What weight you put on it is another matter.

ADV TEBOGO HUTAMO: Well, my submission is that this tribunal should not allow itself to get to that point of having to listen to the testimony which has the potential of being discarded by verge of what we already know that she has no capacity to be before these proceedings and when the discretion has to be exercised, it has to be exercised in light of the fact that we have other witnesses who shall be given the platform to testify before these proceedings. In the interest of saving time, in the interest of getting to a conclusion in this matter, and it might not be appropriate while we are aware of the relevance or the irrelevance of this testimony which is about to be tendered to allow ourselves to spend time when we should be dealing with other matters which are relevant to the proceedings. So, I call upon you Justice, to avoid a situation where we should spend time – ultimately a decision needs to be made and that the witness does not have the capacity to testify before these proceedings – otherwise we will just be opening these proceedings to anyone to say what is in their mind. Thank you Justice.

ARBITRATOR JUSTICE MOSENEKE: Yes. I needed to ask each of the Counsel their responses before I give you the opportunity to respond – I'll give it to you again. Advocate Hassim.

ADV ADILA HASSIM: Thanks Justice. We don't object. We hear the concerns of our colleague in relation to expertise and the ability to give an opinion if you are not an expert. So I think – which I think was a good point – I think if the evidence is limited to direct testimony and if the evidence is not prolonged that we are constraint

within certain time limits – we would have no objection to this witness. The witness – it would seem – and I say this from quickly perusing the Affidavit that had been provided, it would seem to be an interesting witness in an interesting perspective – that is not the standard...

5 **ARBITRATOR JUSTICE MOSENEKE**: It is not the standard, yah. A test – relevance and weight – relevance and cogency ...

ADV ADILA HASSIM: What's harder to determine is whether the extent to which the testimony is relevant, because it is not tied as far as I know – again we haven't heard the evidence.

10 **ARBITRATOR JUSTICE MOSENEKE**: Yes, general experience of every mental health care user would not ordinarily be useful – it has to be a specific one.

ADV ADILA HASSIM: And the evidence of a mental health care user for the basis of drawing some inferences can't be made in this in this case, because the witness is not an expert. So, that is the difficulty – with respect to the witness, and I don't
15 want to waste her time either, but if there is a way to provide the witness to be heard, subject to...

ARBITRATOR JUSTICE MOSENEKE: ...and what do I say to advocate Hutamo at this point? Every other mental health care user may step up and say I know something about this stage, let me tell you at my expense in generic terms.

20 **ADV ADILA HASSIM**: I think that's a valid point. I don't have an argument against that. And I do think that we – as my colleague said – have to be mindful of the time and the space of this platform.

ARBITRATOR JUSTICE MOSENEKE: Yes, thank you. Advocate Groenewald.

ADV DIRK GROENEWALD: Thank you Justice. Justice, we don't have a specific view on this issue. The long and the short is that we would like to see that the family members are informed of relevant information – information that can assist them – information that can assist the proceedings so, to the extent that's my colleague from Legal Aid SA say, can explain to us to what extent the evidence will be relevant – we submit that the witness should be afforded the opportunity to provide either a brief summary of what she is going to testify to what extent the evidence will be relevant and then a decision can be made on that specific point. And insofar as my colleague from the government argues that we are opening the floodgate – I think that individual assessment on the relevance of the witness should be determined by case by case or witness by witness basis, but that's in short

ARBITRATOR JUSTICE MOSENEKE: Yah, but relevance should be established right upfront or narrowly, isn't it?

ADV DIRK GROENEWALD: Indeed so Justice, we have no issue with that.

ARBITRATOR JUSTICE MOSENEKE: Yah. Advocate.

ADV PATRICK NGUTSHANA: Justice Moseneke our view is that and that is correct that the relevance must be established first before any witness could be called and from the submissions which had been made on behalf of Legal Aid – I am not certain that a minimum threshold of relevance has been made and my view is that this witness has indicated in her report that she bases her experiences on – not only personal experiences also her experiences makes reference to a number

of documents – it is quite clear that Dr ThalaThala had testified on the experiences of mental health care users that is in the field – he is an expert in the field – we can make do with what Dr ThalaThala had testified on and if this witness would be relevant – my suggestion is that an expert witness in the field should sit down with this witness and draw a report on how – based on the experiences of this witness – ideally and other mental health care users in her similar position – my submission should be that this witness as based on relevance as a minimum requirement – this witness should be limited Justice Moseneke. I tend to agree with advocate Hutamo’s submissions that if we allow this witness our chances are that we may have to allow many other witnesses and as a fact there had been other mental health care users who have approached us informally and we advise them that their evidence would not be relevant – if they are indeed to be relevant of assisting with these proceedings, then you will be consulted by experts. In any event, if this evidence would be relevant we can procure an expert witness to undertake that exercise Justice Moseneke.

ARBITRATOR JUSTICE MOSENEKE: Yes. I’ve turned the procedure upside down – I should now give you an opportunity to say a few things, but the last weight should be from the objector – is there anything else you would like to say? One of the options would be – I could tell you and I don’t care if you is that the evidence not to be permissible, unless some unless you persuade me otherwise. You know how it works in the courts – I show you my hand and ... you have not persuaded me, subject to further submission of relevance and ultimately win

ADV LILLA CROUSE: Yes, thank you...

ARBITRATOR JUSTICE MOSENEKE: So, you may - we may adjourn for you consider your position or you may recall the witness and we will see if you might call the witness again later when you have met the two requirements of relevance – it's an initial requirement - and then cogency or weight comes last, at the end.

5 **ADV LILLA CROUSE:** Yes. Justice I have made the submissions that I think it is relevant – we speak to the Ombuds report – we speak in the whole system – that is in the Affidavit that is before the court. If this is the court's ruling that that's not relevant, then I can take it no further than that.

ARBITRATOR JUSTICE MOSENEKE: You know how it works – it is not my ruling
10 yet. I am inviting you to persuade me.

ADV LILLA CROUSE: Yes. In our opinion it is in the interest of justice, it's in the interest of the final decision that this arbitration wants to achieve that this witness be given the opportunity time to do so.

ARBITRATOR JUSTICE MOSENEKE: What about the floodgates argument?

15 **ADV LILLA CROUSE:** I really think that is a non-issue. Each witness will be assessed on its own and ultimately the floodgates are guarded by the practitioners. Mental health care users are stigmatised – their voice needs to be heard – those are my submissions.

MS CLAUDIA CAMPBELL: Justice, sorry, may I make a comment?

20 **ARBITRATOR JUSTICE MOSENEKE:** Not at this stage.

MS CLAUDIA CAMPBELL: Okay.

ARBITRATOR JUSTICE MOSENEKE: Wait, I'm going to say yes, I am going to allow you to. Whether we are going to ask you to continue sitting or leave, we will give you an opportunity which I will do – I, very respectfully, will turn back to you just now. Counsel.

5**ADV PATRICK NGUTSHANA**: Justice, I must say I have seen very strange submissions from Legal Aid and Hurter Spies to suggest that relevance should be decided on a case by case – that will not contain...

ARBITRATOR JUSTICE MOSENEKE: By Hurter Spies you mean advocate Groenewald?

10**ADV PATRICK NGUTSHANA**: Advocate Groenewald, yes.

ARBITRATOR JUSTICE MOSENEKE: Your learned colleague, yes.

ADV PATRICK NGUTSHANA: My learned colleague submitted that let's hear the witness and determine the relevance later, that way to deal with the floodgate of
15 every user coming to this proceedings – the effect of it is that we are going to have hundreds of witnesses coming through here – witnesses that we will have to listen to their testimony to make a determination later. So, it doesn't deal with that aspect. So, it still remains an issue that we cannot waste time when we have other matters to attend to than to listen to testimony that has no assistance in the hope that at the
20 end or at some point we may pick some of the things that they have said.

ARBITRATOR JUSTICE MOSENEKE: What do you say about the submission that – it's in two parts - one says mental health care users don't always get the opportunity to be able to express themselves – the other is it's remedially relevant when you are in search of a never-ever-again position when you are looking for 5closure in other words, shouldn't you listen to a mental health care user? That's where the argument comes through. I advise you to deal with that.

ADV PATRICK NGUTSHANA: Yes. In response to that Justice – our response is, let's stick to our business – the fact that they were never given the platform – this should not be used for that purpose. Therefore, this is not the platform for them to 10be given that opportunity. We have a business to run with and let's just limit ourselves to that business – it is an arbitration in respect of particular issues and particular matters – let's stick to that. If there is a need for a platform for them to be given to express themselves, then arrangements would have to be made with those who are able to assist them to give them that platform, but not in this proceedings.

15**ARBITRATOR JUSTICE MOSENEKE**: Very well, I think I have all the submissions. This is your opportunity Ms Campbell.

MS CLAUDIA CAMPBELL: I think what I've heard Justice – in the submissions made right now is that it is cast very much in the light to give voice to mental health care users, that is exactly in the forefront of why I am here. If you look at the 20Affidavit, the fact that I am a mental health care user is not the primary focus – it does give context for the reason why I went into this area of research. What really is of importance is the fact that there are many systems that play a role into the general system of mental health care, which in this case affected all the patients of

Life Esidimeni marathon project. In terms of how that reflects in the national policy of the mental health care policy...

ADV PATRICK NGUTSHANA: Justice, if I can just interject – I just want to find out – the address is it relation to the objection raised or is the witness assisting the
5[inaudible 44:46]?

ARBITRATOR JUSTICE MOSENEKE: The answer is no...

ADV PATRICK NGUTSHANA: Okay.

ARBITRATOR JUSTICE MOSENEKE: But there is something called courtesy in life where you would – the answer is no. The legal decision I am going to make ...

10**ADV PATRICK NGUTSHANA:** Thank you Justice, thank you.

ARBITRATOR JUSTICE MOSENEKE: The witness was asked to speak and you don't say to them *Shut Up* – you allow them to, that is what I am doing, but I am going to make a legal ruling and I have heard the argument...

ADV PATRICK NGUTSHANA: I do apologise for the intervening.

15**ARBITRATOR JUSTICE MOSENEKE:** No problem at all. The courtesy matter is being respectful to others – that is what I am doing.

ADV PATRICK NGUTSHANA: I appreciate that.

ARBITRATOR JUSTICE MOSENEKE: Very well. Please continue.

MS CLAUDIA CAMPBELL: So considering the fact that I have post graduate
20degrees and an extensive career within corporate strategy and experience of

working in this field – the Ombudsman’s report and the evidence that had since been provided also rests heavily on the mental health care act and the mental health care policy framework plan for 2013 to 2020, In the research that I have done I have not approached this to explain the fact of why I am a mental health care user and give my opinion about that, but it is to look at the systems in play that are creating an existing circumstances in which mental health care users have been treated and will be treated. This speaks to the matter of redress and in addition it was a point that was brought up with Dr ThalaThala last week in terms of the fact that there is an indication that there are thousands of individuals within South Africa who would in fact have existing skills that could be mobilised in the mental health care...

ARBITRATOR JUSTICE MOSENEKE: But you are not – I see in your evidence you are saying you are an expert in the field.

MS CLAUDIA CAMPBELL: What I did say in my evidence is that through these conversations I have spoken to many experts and they were too fearful in order to sit on the stand – so nobody was able to ...

ARBITRATOR JUSTICE MOSENEKE: Let me explain to you one problem and it is brief – it is not going to be long as the others. For very good reason, a lot of procedure requires that evidence must be relevant and relevant evidence can be tendered by a witness who is experienced in the events that are relevant or by an expert. Sometimes evidence are tendered by people by virtue of their office, eg. a policeman, an Ombudsman or and so on and in execution of their duties – statutory duties, but ordinarily in a hearing you come and talk about things you know.

Sometimes some of those things are what you have heard of and the limitation of what is allowed – what you felt, touched, thought – so there is an experiential level limitation to witnesses, okay. The second part is what you have studied and learned by experience over a passage of time. With that the court listens to you because you have studied more than the person who sits in the tribunal or in a court or in an arbitration. So they listen to you, because you have acquired a high level of skill in the field that allows you express an opinion, which witnesses normally don't accept within their own experiences as they relay their experiences. So, there is a difficulty before us – it is not a difficulty of whether or not you ought to get voiced or whether or not you know what you are talking about – it is whether you fit into those categories. Otherwise, it is argued and I am here to make a ruling – everybody will step up and I know from my own office and the office of the Ombud I can't tell you how many people turn there to come and say their piece here – many many people approach the arbitrator's office. So, the law has a way of limiting those who may speak in a – and usually it is the Council who decides who is sift – so the question is whether we are persuaded by your advocate that you ought to be giving evidence. So, what do you want me to do? I am happy to adjourn – I am happy to and give a ruling on the matter and I will allow you the opportunity to reconsider your position, because it is in your part to insist in which event I have to make a ruling or we withdraw the witness and consider to call the witness at another time – once we have qualified to assess the witness appropriately?

ADV LILLA CROUSE: Can the court just give me a minute? Justice, our position is that the witness is not available after tomorrow – so, she is only available today.

So, we will have to stand by our request that her evidence is in fact relevant and that she has in fact something to say that speaks to this tribunal. So, we will have to stand by asking the court to make a ruling.

ARBITRATOR JUSTICE MOSENEKE: Yes. Very well, I don't think I am going to provide reasons for this ruling again in my award, but I take the view that the witness is not sufficiently qualified as about to tender relevant evidence. It is equally unclear if her evidence that in the end we will have the cogency or will deserve the weight that will add to the resolution of the dispute in the arbitration and I consequently would advise you to ask the witness to step down to be called later if circumstances were to change.

ADV LILLA CROUSE: As the court pleases, thank you.

ARBITRATOR JUSTICE MOSENEKE: Very well. You follow what I have just said Ms Campbell?

MS CLAUDIA CAMPBELL: Yes, I believe I do.

ARBITRATOR JUSTICE MOSENEKE: Yes, thank you.

ADV LILLA CROUSE: Justice it is then up to my learned friend who doesn't want to waste the tribunal's time to call his witness.

ARBITRATOR JUSTICE MOSENEKE: Yes, indeed.

ADV TEBOGO HUTAMO: Thank you Justice. We have made the arrangements for the witness to be present at 2 o'clock – that we have arranged with my learned colleague in anticipation of other witnesses being available to testify before her. So,

in the absence of any further witness I will request that we adjourn until 2 o'clock until the witness to be available as it was arranged for him to be here at that time.

ARBITRATOR JUSTICE MOSENEKE: Is that satisfactory though?

ADV TEBOGO HUTAMO: Justice, as I have indicated it was arranged that there will be other witnesses before 2 o'clock...

ARBITRATOR JUSTICE MOSENEKE: Was it just Ms Campbell?

ADV TEBOGO HUTAMO: We actually understand there was Ms Campbell who was testifying, so we allocated that time for their testimony and we have made arrangements that our witness will be available at 2 o'clock – that is the arrangements that we have made. So what I am submitting is that absent any witness at this time, we request that we will adjourn and resume at 2 o'clock as we have pre-arranged the appearance of that witness?

ARBITRATOR JUSTICE MOSENEKE: Yes, we will take the 1-hour lunch now - it's 1 o'clock until 2 o'clock, we are adjourned.

15

30 November 2017

SESSION 3

ARBITRATOR, JUSTICE MOSENEKE: Thank you. You may be seated. Adv. Hutamo.

5**ADV. TEBOGO HUTAMO:** Thank you Justice. We would like to call Daniel Buda as a witness on behalf of the government.

ARBITRATOR, JUSTICE MOSENEKE: Mr. Buda, in what language do you want to testify? (Vernac).

MR. DANIEL BUDA: IsiZulu.

10**ARBITRATOR, JUSTICE MOSENEKE:** IsiZulu.

ADV. TEBOGO HUTAMO: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Would you put your full names on record?

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: Daniel Buda.

15**INTERPRETER:** Those are his names, Justice.

MR. DANIEL BUDA: Will you spell your last name?

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: B U D A.

ARBITRATOR, JUSTICE MOSENEKE: Do you swear that the evidence you are about to give will be the truth and nothing but the truth? And if so, please raise your right hand and say so help me God.

INTERPRETER: ...Interpret...

5**MR. DANIEL BUDA:** ...Reply...

INTERPRETER: Sworn in Justice.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. TEBOGO HUTAMO: Thank you. Mr. Buda, can you please tell us where you are currently employed?

10**INTERPRETER:** ...Interpret...

MR. DANIEL BUDA: ...Reply...

INTERPRETER: I work in Mamelodi Regional Hospital.

ADV. TEBOGO HUTAMO: In what capacity?

INTERPRETER: ...Interpret...

15**MR. DANIEL BUDA:** Admin officer for support services.

ADV. TEBOGO HUTAMO: And what are your responsibilities in that post?

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: ...Reply...

INTERPRETER: I manage the mortuary services.

MR. DANIEL BUDA: Management of cleaning of services.

INTERPRETER: Management of cleaning services.

MR. DANIEL BUDA: Management of porter services.

INTERPRETER: Management of porter services.

5**ADV. TEBOGO HUTAMO:** I just want you to deal with the first aspect of your responsibility relating to the management of mortuaries. What would that entail, like when you manage mortuary services?

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: Number one: Ensure admission of corpses from the wards.

10**INTERPRETER:** You can continue.

MR. DANIEL BUDA: Two: Management of handing over of corpses to grieved families and the undertakers.

ADV. TEBOGO HUTAMO: Yes.

MR. DANIEL BUDA: Three: Management of resources in the mortuary.

15**ADV. TEBOGO HUTAMO:** Justice, I beg leave to hand up an exhibit, which is ELAH104. I have already provided it to my learned friends, and I believe there is a copy to be made available to the witness. You were still dealing with your responsibilities for the management of the mortuary services. Can you just give an indication as to how many mortuaries does the hospital have?

20**INTERPRETER:** ...Interpret...

MR. DANIEL BUDA: Two, old and new.

INTERPRETER: We have two mortuaries, we have the old one and the new one.

ADV. TEBOGO HUTAMO: And what is the capacity in respect of the old one?

INTERPRETER: ...Interpret...

5**MR. DANIEL BUDA:** 40.

INTERPRETER: 40?

MR. DANIEL BUDA: Shelves.

INTERPRETER: They have 40 shelves.

ADV. TEBOGO HUTAMO: And then what is the capacity in relation to the new
10one?

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: 52 trays of shelves.

INTERPRETER: They have 52 trays of shelves.

ADV. TEBOGO HUTAMO: If I can just take you back to your testimony.

15**ADV. LILLA CROUSE:** Justice, with respect, I know my learned friend is very
worried about time. We are having the evidence twice in English now and I wonder
if it is necessary to repeat the English version of what the witness is saying.

ARBITRATOR, JUSTICE MOSENEKE: The translation, hey.

ADV. LILLA CROUSE: Ja.

ARBITRATOR, JUSTICE MOSENEKE: Come again. I have not been with it. Are you saying, is there a repetition by the interpreter and the witness?

ADV. LILLA CROUSE: The witness is speaking English and the interpreter is speaking English at this stage.

5**ARBITRATOR, JUSTICE MOSENEKE:** I see. Shall we get that right? Mr. Buda, do you want to speak in English?

MR. DANIEL BUDA: Justice, I think I'll be mixing.

ARBITRATOR, JUSTICE MOSENEKE: I beg your pardon?

MR. DANIEL BUDA: I will be mixing IsiZulu and English.

10**ARBITRATOR, JUSTICE MOSENEKE:** You will mix IsiZulu and English. Ja, where you can, for obvious reasons right, you've got an interpreter next to you. If there are no IsiZulu words for a particular thing, you can use English, but by and large you should allow us to record in a way that can be read quite readily. Okay let's continue.

15**ADV. TEBOGO HUTAMO:** Thank you. I was just saying that I want to take you back to when you testified that you've been employed at the hospital as an admin officer for support services. Can you just give an indication the period from which you were appointed to the position?

INTERPRETER: ...Interpret...

20**MR. DANIEL BUDA:** 1 April 2015.

ADV. TEBOGO HUTAMO: Okay. Now I would like you to deal with the mortuaries that you have just mentioned, the old mortuary and the new mortuary. What has been the condition of these mortuaries since your appointment?

INTERPRETER: ...Interpret...

5**MR. DANIEL BUDA:** ...Reply...

INTERPRETER: Both of these mortuaries are functioning well.

ADV. TEBOGO HUTAMO: Is there any method that you use in order to monitor the functionality of these mortuaries?

INTERPRETER: ...Interpret...

10**MR. DANIEL BUDA:** ...Reply...

INTERPRETER: We have temperature recordings of the cold rooms that we monitor each and every morning.

ADV. TEBOGO HUTAMO: There should be a document before you, it is titled ELAH104. Do you have it?

15**MR. DANIEL BUDA:** Yes, I do have it.

ADV. TEBOGO HUTAMO: Yes. Then in respect of this one it is written 2016 old mortuary, do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. TEBOGO HUTAMO: Then if you turn the page to page 2, the heading is recorded as: "Daily temperature records for refrigerators." Do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. TEBOGO HUTAMO: Are you familiar with this document?

MR. DANIEL BUDA: Of course I am.

ADV. TEBOGO HUTAMO: Can you explain what is the significance of this
5document?

MR. DANIEL BUDA: This document is used to check the temperature on daily
basis, in the morning preferably at 8:00 and at 16:00 in the afternoon. This
temperature consists of three different schedules so to say. Range 2 to 8 that is
where it is safe. Then from 10 until 22 it is unsafe. Then from 0 to 10 it is unsafe.

10**ADV. TEBOGO HUTAMO:** And then once again if you look at the top of the
document it records facility and then it is written old mortuary. Do you see that, at
the top left?

MR. DANIEL BUDA: Yes.

ADV. TEBOGO HUTAMO: And towards the right there is a month and year. Can
15you just elaborate what is the significance of that?

MR. DANIEL BUDA: Facility indicates one of the mortuaries which is the old one
and the month and the year. This one is for December 2016.

ADV. TEBOGO HUTAMO: And then proceed towards your right, there is a district.

MR. DANIEL BUDA: District is written Mamelodi Regional Hospital – that is where
20we are working, where mortuaries are situated.

ADV. TEBOGO HUTAMO: And then you were explaining the various temperatures. You referred to two to eight and then 10 to 22 and then later on you referred to 0 to 10. Can you just deal with what you referred to as the safe temperature where it is written 2 to and explain to us what method do you use to indicate if it was in good condition?

MR. DANIEL BUDA: When the temperature is at 2, there is a screen just outside the door of the refrigerator, it reflects these numbers and then that is where we check in the morning and also check in the afternoon according to the degree searches that are reflecting on that screen. From 2 to 8 is safe, which simply means there is no need for us to panic.

ADV. TEBOGO HUTAMO: And then if you look at the document at the top there are numbers written there from number 1 to 31, do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. TEBOGO HUTAMO: What do those numbers signify?

15 **MR. DANIEL BUDA:** These numbers are indicating the days from the first until the end of the month.

ADV. TEBOGO HUTAMO: So this reflects the days of the month.

MR. DANIEL BUDA: Exactly.

ADV. TEBOGO HUTAMO: And then will I be correct to say where the tick appears under one... before I get there, if you look at number one, below that there is a.m.

and p.m. and in your testimony you said that you monitor the mortuary in the morning and in the afternoon.

MR. DANIEL BUDA: Yes.

ADV. TEBOGO HUTAMO: So that will be the significance of those letters.

5**MR. DANIEL BUDA:** Exactly.

ADV. TEBOGO HUTAMO: And then there is a number two, will that also be the second day of the month of December?

MR. DANIEL BUDA: Yes.

ADV. TEBOGO HUTAMO: And the tick appears along number two and then what
10will be the condition of the mortuary at that time?

MR. DANIEL BUDA: It was safe and well operational.

ADV. TEBOGO HUTAMO: So do I understand you to be saying if the tick appears along number two, for each day marked, it meant that the mortuary was in working condition.

15**MR. DANIEL BUDA:** Exactly.

ARBITRATOR, JUSTICE MOSENEKE: What does 2 represent, 2 degrees centigrade?

MR. DANIEL BUDA: 2 Degree Celsius.

ARBITRATOR, JUSTICE MOSENEKE: Celsius?

20**MR. DANIEL BUDA:** Yes.

ADV. TEBOGO HUTAMO: Justice, through your leave, I just want to make reference to the subsequent months without going through each and every day of the month. I am not sure if ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: The record is pretty self-explanatory.

5**ADV. TEBOGO HUTAMO:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: I mean absent any attack by your colleagues, you can come back on re-examination.

ADV. TEBOGO HUTAMO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: But to me it is pretty... you've explained
10enough. What I want to know is safe period, when does a safe period happen? I
can see on the left side it is from 10 degrees and higher, isn't it? Just look at the left
column of the schedule under Degrees Celsius, is that what that means?

MR. DANIEL BUDA: Yes.

ADV. TEBOGO HUTAMO: What will be the temperature when it is reflected
15between 10 and 22, the condition? What will be the condition of the mortuary when
the temperature readings reflect between 10 and 22?

MR. DANIEL BUDA: It will be hot.

ADV. TEBOGO HUTAMO: Okay then let's deal with the bottom part of that
schedule, 0 to 10, what will be the condition of the mortuary?

20**MR. DANIEL BUDA:** It will be cold.

ADV. TEBOGO HUTAMO: At that temperature, will it be safe?

MR. DANIEL BUDA: It won't be safe.

ADV. TEBOGO HUTAMO: Sorry?

MR. DANIEL BUDA: It won't be safe.

5**ARBITRATOR, JUSTICE MOSENEKE:** What do you mean by safe or unsafe?

MR. DANIEL BUDA: Safe it means the mortuary temperature it is correct and then unsafe the mortuary temperature it will be either hot or extremely cold where bodies would be freezing.

ADV. TEBOGO HUTAMO: Okay. Whilst we are still on the schedule, I just want
10you to have regard to day number three and day number four. If you look at the bottom where there are ticks, closer to number two, nothing is indicated there. Can you explain why there are no ticks in that block?

MR. DANIEL BUDA: Thank you. On this one it simply indicates the weekends and from the original it is highlighted in a visible colour, which simply means there are no
15staff on duty, it is the reason why temperatures are not checked. Thank you.

ADV. TEBOGO HUTAMO: Okay. And will that apply to day number 10 and 11?

MR. DANIEL BUDA: Yes of course.

ADV. TEBOGO HUTAMO: The same with 17 and 18.

MR. DANIEL BUDA: 24 and 25.

ADV. TEBOGO HUTAMO: Okay thank you. Justice will note that these reports, they basically run from December to January, but like they've been put... they have been collated the other way around. If Justice goes to page 12 reflected at the bottom on the right hand side.

5**ARBITRATOR, JUSTICE MOSENEKE:** Yes.

ADV. TEBOGO HUTAMO: For 2016 it will be for the month of January. And then page 11 will be February and then the schedules go until page 2, which will be December.

ARBITRATOR, JUSTICE MOSENEKE: Well let's quote the relevant month we are
10looking for, isn't it?

ADV. TEBOGO HUTAMO: Yes.

ARBITRATOR, JUSTICE MOSENEKE: You are going to take the witness to the body from Cullinan, are you?

ADV. TEBOGO HUTAMO: Indeed. Mr. Buda, there should be documents before
15you. I would like you to go to a document referred to as ELAH52. There should be a file before you, if you can be assisted. Have you managed to get the document?

MR. DANIEL BUDA: Yip.

ADV. TEBOGO HUTAMO: It appears to be a letter from Mamelodi Regional Hospital to the acting HOD. Are you familiar with this letter?

20**MR. DANIEL BUDA:** Yes, I am.

ADV. TEBOGO HUTAMO: You have mentioned that you are the official responsible for the mortuary. Where would the content of this letter be obtained from?

MR. DANIEL BUDA: Thank you.

5**ADV. TEBOGO HUTAMO:** Because it appears that you are not the author of the document.

MR. DANIEL BUDA: Yes, I am responding to the question. This letter was written by my manager. He managed to get the information from me telephonically, as by that time I was not on duty but attending training for the whole week at Kalafong
10Hospital.

ADV. TEBOGO HUTAMO: There has been evidence before these proceedings about the corpse of Mr. Joseph Gumede who was kept at Mamelodi Hospital's mortuary. Are you familiar with that corpse and the circumstances of the body being kept at the hospital?

15**MR. DANIEL BUDA:** Yes, I am.

ADV. TEBOGO HUTAMO: Can you proceed to give an account how have you become aware of that corpse?

MR. DANIEL BUDA: Thank you for the question. Regarding the corpse of the late Mr. Joseph Gumede, on the 16th of August 2016 ...intervened.

20**ADV. TEBOGO HUTAMO:** Whilst you are still on that, can you just look at that letter on the third bullet point. It is written the 15th. Do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. TEBOGO HUTAMO: So I have just heard you mentioning the 16th. What will be the correct date?

MR. DANIEL BUDA: Okay thank you for that. On this one I am pleading that we acknowledge that here it was written the wrong date, the correct date is the 16th.

ADV. TEBOGO HUTAMO: The correct date is the 16th?

MR. DANIEL BUDA: Yes.

ADV. TEBOGO HUTAMO: Of August 2016.

MR. DANIEL BUDA: Exactly.

10 **ADV. TEBOGO HUTAMO:** Then you can proceed to give an account.

MR. DANIEL BUDA: On the said date as indicated, I received a call from our acting CEO by then, by the name of Matron S. Mahlangu, who was appointed as our nursing service manager. She phoned me indicating that she received the call from Cullinan requesting for the storage of a corpse from our mortuary.

15 **ADV. TEBOGO HUTAMO:** Yes and then, what then transpired after that conversation?

MR. DANIEL BUDA: I indicated to her that we need to have a written request in that regard so that our CEO can give the authority so that the corpse can be admitted in Mamelodi Hospital, because myself at my level, I have no right to do
20 that. It is either the CEO or either any of the EXCO members within the hospital as our senior management.

ADV. TEBOGO HUTAMO: Was such a request ever made in writing?

MR. DANIEL BUDA: On the 16th, the letter, we never received it, because another thing is that Me. Mahlangu indicated to me that up until 16:00, she hadn't received any email. Because in our conversation I indicated that it would be proper if that email can be sent through so that it can be approved. And the contents of the letter should indicate the details of the deceased and the details like the registration of the vehicle that will be transporting the corpse to Mamelodi Hospital.

ADV. TEBOGO HUTAMO: Still on ELAH 52, can you turn to the third page of that document. What is that document?

10**MR. DANIEL BUDA:** This is a letter that was sent through from Cullinan.

ADV. TEBOGO HUTAMO: Yes and then what was the content of the letter?

MR. DANIEL BUDA: Should I read it?

ADV. TEBOGO HUTAMO: Yes, you can proceed to do so, just under request to store, I mean like from the subject.

15**MR. DANIEL BUDA:** "Cullinan Care and Rehabilitation Centre is experiencing a problem with the mortuary facility which is not working. Currently our mortuary space takes only three corpses. We would like to have a long term arrangement with your hospital, in case we are unable to cater for more than three. Currently we are requesting your assistance to store a corpse in your mortuary. Particulars of the
20deceased are as follows: Mr. Gumede Joseph. ID number: 575035.

ADV. TEBOGO HUTAMO: Yes proceed.

MR. DANIEL BUDA: 432089.

ADV. TEBOGO HUTAMO: Thank you. And was this body ever transferred to the hospital?

MR. DANIEL BUDA: Yes of course the body was transferred to the hospital.

5**ADV. TEBOGO HUTAMO:** And then can you indicate when was it transferred?

MR. DANIEL BUDA: The corpse was transferred on the very same day. But one needs to indicate that I waited up until 17:00 without any arrival of the corpse.

ADV. TEBOGO HUTAMO: Yes.

MR. DANIEL BUDA: I then requested the housekeeping supervisor, Me. Zondo
10Ceevee (?), to assist on my behalf in that regard.

ADV. TEBOGO HUTAMO: And you say you waited until 17:00.

MR. DANIEL BUDA: Yes.

ADV. TEBOGO HUTAMO: What transpired after 17:00 on that day?

MR. DANIEL BUDA: That is when I knocked off and then I received a call just
15before 19:00, when I was phoned by the very same Me. Zondo Ceevee, who indicated that security officials had already allowed the undertaker and the corpse and the corpse was admitted in the mortuary.

ADV. TEBOGO HUTAMO: And if you go back to ELAH104 and then particularly
page 6. Can you just give an indication as to the condition of the mortuary on the
20day and the subsequent days?

MR. DANIEL BUDA: I think I am lost. On which page?

ADV. TEBOGO HUTAMO: Like if you look at the bottom of the document on the right there is a numbering, page number 6.

MR. DANIEL BUDA: Okay I have got it.

5**ADV. TEBOGO HUTAMO:** If you go to the top of the document, then can you just read it for the record, the facility as well as the period during which these daily temperature records were kept for.

ARBITRATOR, JUSTICE MOSENEKE: Well we can see from the record on page 6 that everything was in order, right.

10**MR. DANIEL BUDA:** Yes.

ADV. TEBOGO HUTAMO: Okay.

ARBITRATOR, JUSTICE MOSENEKE: Counsel, if that is attacked then you can come back.

ADV. TEBOGO HUTAMO: Thank you Justice.

15**ARBITRATOR, JUSTICE MOSENEKE:** But it is clear. In August all the ticks are there a.m. and p.m. that the refrigeration was working properly.

ADV. TEBOGO HUTAMO: Mr. Buda, can you then proceed to give an account of your observation on your return to work the next day?

MR. DANIEL BUDA: On my return on the next day which was on the 17th, firstly
20the aim was the verification of the corpse that arrived in my absentia whereby Me.

Zondo stand in for me. And I received a call immediately reporting for duty from my staff at the mortuary who indicated what is going on, because there is a smell in the mortuary. I then decided to go to the mortuary to meet with them.

ADV. TEBOGO HUTAMO: I am going to receive you once again to ELAH number 552, the first page thereof. I am going to read it for the record, there are bullet points, and I am going to read the second bullet point which records that: “According to the mortuary supervisor, Mr. Buda, the deceased came already decomposed, because Cullinan indicated the challenge on their side of the mortuary not functioning well.” And then it refers to the letter that you’ve already read into the record. Can you just
10 explain the content of this paragraph?

MR. DANIEL BUDA: Thank you. Can I put this one in vernac?

ADV. TEBOGO HUTAMO: Yes, proceed.

MR. DANIEL BUDA: ...Reply...

INTERPRETER: According to our culture.

15 **MR. DANIEL BUDA:** ...Reply...

INTERPRETER: It is a norm that when something is smelling, it usually indicates that that thing is off or decomposed.

ADV. TEBOGO HUTAMO: And do you recall what was the condition of the corpse on the day?

20 **MR. DANIEL BUDA:** Yes, I do.

ADV. TEBOGO HUTAMO: Can you please proceed to give an account?

MR. DANIEL BUDA: On the 17th when we went to verify the corpse that arrived the previous day and immediately after being called by my staff at the mortuary who were complaining about the bad smell, taking into account that we received the corpse from Cullinan who had a complain about the breakdown of their mortuary, 5which was non-functional, we decided to verify the corpse and then we opened the shroud that was covering the corpse of the late. And then when we opened that shroud, that's when we started feeling the smell.

ADV. TEBOGO HUTAMO: Yes. And then do you know when was the corpse of Mr. Gumede fetched from the Mortuary?

10**MR. DANIEL BUDA:** From the mortuary at Cullinan?

ADV. TEBOGO HUTAMO: At Mamelodi Hospital.

MR. DANIEL BUDA: The corpse was fetched in different ways. It was fetched by the forensic and again it was fetched by the family in February, the 13th, of 2017.

ADV. TEBOGO HUTAMO: Can you please just read into the record, the paragraph 15at bullet point number 4? ELAH52.

MR. DANIEL BUDA: “The deceased body was transferred from Cullinan on the 16th” – according to the correction iii

ADV. TEBOGO HUTAMO: Yes, no, I am referring to bullet point number 4.

MR. DANIEL BUDA: Okay thanks.

20**ADV. TEBOGO HUTAMO:** yes.

MR. DANIEL BUDA: “The deceased body was collected by forensic pathology services on the 27th of September 2016 and returned to Mamelodi Hospital on the 15th of December 2016.”

ADV. TEBOGO HUTAMO: Did you observe the condition of the corpse on its return from the forensic pathology services?

MR. DANIEL BUDA: No.

ARBITRATOR, JUSTICE MOSENEKE: Do you know why it was kept there for nearly three months?

MR. DANIEL BUDA: It went for a post mortem.

10 **ARBITRATOR, JUSTICE MOSENEKE:** And when you opened the shroud of Mr. Gumede’s body, what did you observe?

MR. DANIEL BUDA: We observed the body that didn’t look familiar like bodies that we are used to admit, taking into account that we never admitted any deceased body outside the hospital. The body of Mr. Gumede as it died outside our hospital, 15 now the observation from us was the body that looks old. And when you further open on the side of the chest, there were water droplets and then the smell.

ARBITRATOR, JUSTICE MOSENEKE: Yes, the body was decomposed, for starters, to use your words, right?

MR. DANIEL BUDA: Justice, as I have explained, to my understanding in our 20 language, anything with a bad smell we used to say (vernac).

ARBITRATOR, JUSTICE MOSENEKE: Yes, I just want your confirmation that it was decomposed. It should be so in any culture.

MR. DANIEL BUDA: I beg your pardon, Justice?

ARBITRATOR, JUSTICE MOSENEKE: You worked there, you worked at the 5place. I just wanted you to... I don't want to stay here forever. I just wanted you to confirm as your note says that the body was decomposed.

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: ...Reply...

INTERPRETER: Yes, the body had decomposed because I could detect that from 10the smell.

ARBITRATOR, JUSTICE MOSENEKE: And in the second bullet point you say, the information in the letter says according to you, Mr. Buda, the deceased came already decomposed, because Cullinan indicated the challenge on their side of the mortuary not functioning well. Is that correct? Is that true?

15**MR. DANIEL BUDA:** It is true, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Did they tell you how long had their mortuary been dysfunctional?

MR. DANIEL BUDA: They did not indicate.

ARBITRATOR, JUSTICE MOSENEKE: What happens to a body which is in a 20refrigerator which is above 10 degrees?

MR. DANIEL BUDA: Which is above 10 degrees? It won't be getting cold as it is supposed to be.

ARBITRATOR, JUSTICE MOSENEKE: And why do you say in your chart that it is unsafe? It is unsafe for what? What would happen?

5**MR. DANIEL BUDA:** It will be getting hot.

ARBITRATOR, JUSTICE MOSENEKE: And what will happen?

MR. DANIEL BUDA: The body will start smelling.

ARBITRATOR, JUSTICE MOSENEKE: It will start decomposing and smelling.

MR. DANIEL BUDA: Yes Justice.

10**ARBITRATOR, JUSTICE MOSENEKE:** You know your colleague, just to cut to the chase, and this is why you are really here, your colleague from Cullinan says that this body was in good condition when he sent it to you.

MR. DANIEL BUDA: I cannot confirm that Justice. I am only responding to what I saw.

15**ARBITRATOR, JUSTICE MOSENEKE:** Could he possibly be correct that the body was not decomposed when he sent it to your mortuary?

MR. DANIEL BUDA: No, it can't be correct.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. TEBOGO HUTAMO: Mr. Buda, if you can go to the last bullet point, I have
20asked you a question whether do you know when was the body collected.

MR. DANIEL BUDA: Can you repeat that?

ADV. TEBOGO HUTAMO: Do you know when was the corpse of the late Mr. Gumede collected?

MR. DANIEL BUDA: Yes.

5**ADV. TEBOGO HUTAMO:** When was it collected?

MR. DANIEL BUDA: By the family it was collected on the 13th of February 2017.

ADV. TEBOGO HUTAMO: And you've mentioned that the body was taken by a forensic pathology for a period over two months, if you have regard to bullet point 4, do you see that?

10**MR. DANIEL BUDA:** Yes, I do.

ADV. TEBOGO HUTAMO: What was the condition when the body was collected on the 13th of February 2017?

MR. DANIEL BUDA: When the body was collected by the family it really looked very bad.

15**ARBITRATOR, JUSTICE MOSENEKE:** Your answer was, the body looked very bad. Did I hear you well? Is that what you said?

MR. DANIEL BUDA: Yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Explain what that means.

MR. DANIEL BUDA: When you were looking at the body it was very clear to see, if
20I may put it in Zulu, (vernac).

INTERPRETER: You could see that, you could tell that all the liquid in the body was no longer there and it was just skin, it didn't look like it had bones in it, it was just skin.

ARBITRATOR, JUSTICE MOSENEKE: Skin and bones, I thought the witness
5said.

INTERPRETER: ...Interpret...

MR. DANIEL BUDA: ...Reply...

INTERPRETER: Yes Justice, skin and bones, sorry.

ARBITRATOR, JUSTICE MOSENEKE: And all the fluids had left the body, in other
10words the...

MR. DANIEL BUDA: Yes Justice.

ADV. TEBOGO HUTAMO: Was it in the same condition as you saw it at the first
time on the, I mean after having it been brought to the hospital?

MR. DANIEL BUDA: It was too different, as I have indicated before. When it was
15removed by the family, the indication is that the skin was covering the bones, but
when it was transferred from Cullinan, it was still a full body.

ADV. TEBOGO HUTAMO: And when it was taken by the forensic pathology, did
you get to observe the condition of the body on its return?

MR. DANIEL BUDA: When the body was taken by forensic and during the return, I
20never saw the body.

ADV. TEBOGO HUTAMO: So you don't know what was the condition at that time.

MR. DANIEL BUDA: Exactly.

ADV. TEBOGO HUTAMO: And then in respect of the general condition of the two mortuaries at the hospital, did you ever experience any difficulties with regard to the operation of the mortuaries?

MR. DANIEL BUDA: Ever since I was appointed at Mamelodi that never happened. The mortuaries, both of them, were well operational.

ADV. TEBOGO HUTAMO: Thank you Justice, no further questions.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Did anybody tell you why this body was kept such a long time in your mortuary?

MR. DANIEL BUDA: Nobody indicated to me as to why it was kept for so long. But then I found out late after receiving a report that there is a case around patients that were transferred from Esidimeni, who unfortunately passed away in health care centres.

15 **ARBITRATOR, JUSTICE MOSENEKE:** Were you ever asked to store any other body which was of a mental health care user from Life Esidimeni?

MR. DANIEL BUDA: Meaning from other institutions?

ARBITRATOR, JUSTICE MOSENEKE: Other institutions. From Cullinan and also from mental health care users who died at Mamelodi Hospital?

20 **MR. DANIEL BUDA:** In our mortuary we only admitted the corpse of the late Mr. Joseph Gumede from Cullinan only.

ARBITRATOR, JUSTICE MOSENEKE: You done, Counsel? Adv. Crouse.

ADV. LILLA CROUSE: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Am I right? I am in the wrong order, am I? Okay, Adv. Hassim. The way you looked at me it was almost like it is my turn. 5Okay it is your turn, sorry. And you have a big interest in all this, I beg your pardon.

ADV. ADILA HASSIM: We all do.

ARBITRATOR, JUSTICE MOSENEKE: Sorry Adv. Crouse.

ADV. ADILA HASSIM: I have no objection to Adv. Crouse going before me. I was just wondering what happened today that I wasn't first up.

10**ARBITRATOR, JUSTICE MOSENEKE:** You still enjoy precedence. You go ahead.

ADV. ADILA HASSIM: Thanks. Mr. Buda, let's begin with the records that have been provided to us today, the mortuary records. Who fills in these records?

MR. DANIEL BUDA: Mortuary clerks and mortuary attendants.

15**ADV. ADILA HASSIM:** Is it always the same person?

MR. DANIEL BUDA: No.

ADV. ADILA HASSIM: Can it be a different person on a different day?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And can you explain why there isn't any signatures on 20these sheets of paper?

MR. DANIEL BUDA: The checklist came as they are, and I implemented them as they are.

ADV. ADILA HASSIM: Is it regular to have these forms completed without the signature of the person who completed it?

5**MR. DANIEL BUDA:** They were new to me as they are, that's the reason why I implemented them as they are. Because it seems there are checklists that were scanned. I personally wanted to amend them so that I could get the space for the signatures, but I couldn't. Thanks.

ADV. ADILA HASSIM: So it is not normally signed, is that what you are saying?

10**MR. DANIEL BUDA:** They are not normally signed, but there were others that were signed. And as to who informed them to sign, maybe one was innovative on that one.

ADV. ADILA HASSIM: Because I notice that for example on page 12, if you can turn to page 12 of ELAH104, there is a signature and it is dated 1st of January 2016.
15So it is signed at the beginning of the month rather than at the end of the month or middle of the month and it is signed only once. Can you explain who would have signed this?

MR. DANIEL BUDA: Knowing the staff that I am working with, the signature belongs to Mr. Selepe, who is appointed as a mortuary clerk. And once more as I
20have indicated, getting signatures on the checklist, I think one was innovative, because checklists were implemented as they are.

ADV. ADILA HASSIM: So there isn't a requirement to sign.

MR. DANIEL BUDA: That is noted.

ADV. ADILA HASSIM: Do you agree with that?

MR. DANIEL BUDA: I agree.

5**ADV. ADILA HASSIM:** And if you turn to page 3, it is for the month of November 2016 and it is in relation to the old mortuary and all the ticks that go up to the 31st of November, do you see that?

MR. DANIEL BUDA: To the 31st, yes.

ADV. ADILA HASSIM: But why would it go to the 31st when there are 30 days in 10November?

MR. DANIEL BUDA: That was not noticed by then.

ADV. ADILA HASSIM: But who would have ticked it on the 31st of November, when there is no such day as the 31st of November?

MR. DANIEL BUDA: I don't know.

15**ADV. ADILA HASSIM:** And could you then please turn to page 6, and that is August 2016. And again there is a series of marks next to 2 Degrees Celsius. Are those... those look like they are done by the same person, would you agree?

MR. DANIEL BUDA: Yes, I agree.

ADV. ADILA HASSIM: If you just take the first batch for example, day one to five. 20Are those ticks or are those dashes? Is it meant to say everything is fine?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And the next batch is very similar. So would that have been done by the same person every day?

MR. DANIEL BUDA: It is possible.

5**ADV. ADILA HASSIM:** And is it normal for the temperature to remain stable, to be 2 Degrees Celsius on each checking? So these forms are all standard, it is 2 degrees every day, every morning and every afternoon. Is that normal?

MR. DANIEL BUDA: It is normal as per what is reflecting from the screen just outside the door of the mortuary cold room.

10**ADV. ADILA HASSIM:** So in your experience, the temperature doesn't fluctuate within the 2 to 8 degree range, it never goes up to 4.

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: Can you turn to page 7?

ARBITRATOR, JUSTICE MOSENEKE: Well before you leave page 6. Why do the
15 ticks stop on the 25th of August, can you see that?

MR. DANIEL BUDA: I can see that Justice.

ARBITRATOR, JUSTICE MOSENEKE: Would they have not checked the mortuaries on those days?

MR. DANIEL BUDA: It is possible.

20**ADV. ADILA HASSIM:** May I move on, Justice?

ARBITRATOR, JUSTICE MOSENEKE: Yes, you may continue.

ADV. ADILA HASSIM: Page 7 is June 2016. Do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: And it goes up to 31 June and it is cut off a little bit but there is a tick on 31 June, do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: But there are only 30 days in June. Why would there be a tick on 31 June?

MR. DANIEL BUDA: On this one, I don't know.

10 **ADV. ADILA HASSIM:** Same as the other problem?

MR. DANIEL BUDA: Exactly.

ARBITRATOR, JUSTICE MOSENEKE: And whose name is Sanofi Pastee?

MR. DANIEL BUDA: Sanofi Pastee, I don't know.

ARBITRATOR, JUSTICE MOSENEKE: At the bottom of the form.

15 **MR. DANIEL BUDA:** Yes, on the right. I don't know, Justice.

ARBITRATOR, JUSTICE MOSENEKE: But don't they give these forms to you ever so often as head of mortuary services?

MR. DANIEL BUDA: We are producing copies.

ARBITRATOR, JUSTICE MOSENEKE: Yes but who provides this for, where does it come from?

MR. DANIEL BUDA: When I was appointed, I found it being available.

ARBITRATOR, JUSTICE MOSENEKE: And who is Sanofi Pasteur? You don't know who that is?

MR. DANIEL BUDA: I don't know. Maybe if you can verify with FMU and DID, maybe they can be able to respond on this one.

ARBITRATOR, JUSTICE MOSENEKE: Who is FMU?

MR. DANIEL BUDA: Facility Management Unit and DID is Department of Infrastructure and Development.

ADV. ADILA HASSIM: On page 9 of the records it is for April 2016 at the old mortuary. Do you see it?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: Can you see that there is a tick on 31 April?

15 **MR. DANIEL BUDA:** Yes, I do.

ADV. ADILA HASSIM: But there are not 31 days in April.

MR. DANIEL BUDA: I think this one is the same as the other one as indicated before.

ADV. ADILA HASSIM: Is there someone who oversees the filling in of these forms? Is there somebody tasked to oversee that?

MR. DANIEL BUDA: As I have indicated before, it is being completed by our mortuary clerks and mortuary attendants.

ADV. ADILA HASSIM: But they are different people.

MR. DANIEL BUDA: Yes.

5**ADV. ADILA HASSIM:** Is there somebody who oversees the process, to make sure that at the end of the month everything is in order and that in fact it has been correctly filled out?

MR. DANIEL BUDA: It is myself.

ADV. ADILA HASSIM: And did you check these records that are being provided to
10us today?

MR. DANIEL BUDA: I usually check them, but today one can see there are discrepancies here.

ADV. ADILA HASSIM: So you did not check these records?

MR. DANIEL BUDA: I do check them.

15**ADV. ADILA HASSIM:** And when you check them, do you sign on them or how do you make a note that you've checked?

MR. DANIEL BUDA: As I have indicated before, we do not attach signatures.

ADV. ADILA HASSIM: And can you tell me when do you use the old mortuary, what bodies are stored in the old mortuary?

MR. DANIEL BUDA: We transfer bodies to the old mortuary immediately after three months when they are not being claimed by families, where it simply means that they will be ready for paupering.

ADV. ADILA HASSIM: So it is those bodies that have been there for a long time, 5so three months?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And they will be moved to the old mortuary.

MR. DANIEL BUDA: Exactly.

ADV. ADILA HASSIM: Will they ever be moved to the old mortuary sooner than 10three months?

MR. DANIEL BUDA: It happens, but not repeatedly.

ADV. ADILA HASSIM: And so Mr. Joseph Gumede would have been moved to the old mortuary.

MR. DANIEL BUDA: Yes.

15**ADV. ADILA HASSIM:** Was he placed in the old mortuary when he arrived?

MR. DANIEL BUDA: Mr. Joseph Gumede arrived on the 16th and then he was moved to the old mortuary on the 17th in the afternoon.

ADV. ADILA HASSIM: 17 August 2016?

MR. DANIEL BUDA: 2016.

20**ADV. ADILA HASSIM:** So he was in the old mortuary?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And if you turn to page 16, this is now the new mortuary. And you'll see for this day's recording there is a day on which the temperature was reading 8 Degrees Celsius.

5**MR. DANIEL BUDA:** Yes, I do see.

ADV. ADILA HASSIM: I haven't been able to study this as closely as I would have liked, since it was provided to us, but that would suggest that it is not always 2 Degrees Celsius, that it does fluctuate, is that so?

MR. DANIEL BUDA: Yes, but not that much.

10**ADV. ADILA HASSIM:** So it is rare for it to fluctuate.

MR. DANIEL BUDA: It is very rare, maybe once in a quarter.

ADV. ADILA HASSIM: Once in a quarter?

MR. DANIEL BUDA: Maybe, yes.

ADV. ADILA HASSIM: And it would be within the safe range.

15**MR. DANIEL BUDA:** Exactly.

ADV. ADILA HASSIM: And then can you turn to page 30, three-zero? And that is for June 2017, the reading is for June 2017, do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: And that reads 6 Degrees Celsius every day.

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: For that month. Why would that be the case? Why would it now be reading 6 degrees?

MR. DANIEL BUDA: Firstly it is on a safe range and temperature is not being controlled by ourselves. There is a thermometer, it moves on its own.

ADV. ADILA HASSIM: But what would cause it to have a reading higher than 2 Degrees Celsius?

MR. DANIEL BUDA: It might be one of the therms, but in details, our expertise can provide clarity on that one, this is just my thinking.

10 **ADV. ADILA HASSIM:** And then if you turn to page 45 for February 2017 and particularly the first week of February 2017 and Joseph's body was collected on the 13th of February, is that correct?

MR. DANIEL BUDA: Correct.

ADV. ADILA HASSIM: And the first week the temperature reading is at 8.

15 **MR. DANIEL BUDA:** Yes.

ARBITRATOR, JUSTICE MOSENEKE: But that is the new mortuary.

ADV. ADILA HASSIM: That's correct, Justice, that is the new mortuary. But the temperature reading at the new mortuary is 8 Degrees Celsius. When he was returned from the post mortem, after he was returned, was he returned to the old mortuary or to the new mortuary?

20

MR. DANIEL BUDA: Old one.

ADV. ADILA HASSIM: To the old mortuary?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: But can you explain this 8 Degrees Celsius on this reading?

5**MR. DANIEL BUDA:** This 8 Degrees Celsius it is within the correct range which it is safe. In case the temperature is like this, according to the checklist as indicated below here, it is still safe. In cases like this we do not report to FMU for them to log a call.

ADV. ADILA HASSIM: Do you report once it goes to 10 Degrees Celsius, is that
10when you report?

MR. DANIEL BUDA: Exactly.

ADV. ADILA HASSIM: So you wait until it gets into the unsafe region before you report it?

MR. DANIEL BUDA: Yes.

15**ADV. ADILA HASSIM:** And is that common practice for all mortuaries to wait until it gets to the 10 Degree mark, to the unsafe mark?

MR. DANIEL BUDA: Correct.

ADV. ADILA HASSIM: Given what you've said to us about these readings and the signatures, and particularly the later readings for the new mortuary, so the 2017

readings, which appear to be, in some cases checked. So for example, if you turn to page 37, October 2017, you will see it says checked and a signature.

MR. DANIEL BUDA: I can see that.

ADV. ADILA HASSIM: Do you know whose signature that is?

5**MR. DANIEL BUDA:** Yes, I do.

ADV. ADILA HASSIM: Whose signature is it?

MR. DANIEL BUDA: Mr. Mosiah Efram (spelling), one of the mortuary attendants.

ADV. ADILA HASSIM: And on the next page it is the same, checked by the same person.

10**MR. DANIEL BUDA:** Yes.

ADV. ADILA HASSIM: And then again checked by the same person.

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: Why would it be checked and signed on some occasions and not on others?

15**MR. DANIEL BUDA:** As I have indicated before, this was never presented to them to say they need to them. I indicated earlier on that maybe this was an innovative, being innovative of an officer.

ADV. ADILA HASSIM: So when it is signed, it is because somebody took the initiative to do so.

20**MR. DANIEL BUDA:** Yes.

ADV. ADILA HASSIM: But there was never any discussion or agreement that perhaps this should be a system that should be put in place.

MR. DANIEL BUDA: No.

ADV. ADILA HASSIM: Would you say that these documents are reliable given what I have told you, what I have pointed out, the fact that there are these ticks that just continue along very consistently and right to the end of the line, even if there isn't a particular day in the month, even if there are not 31 days in a month, the ticks go all the way up to 31. Would you agree that that tells us that these are not reliable?

10**MR. DANIEL BUDA:** I think they are reliable.

ADV. ADILA HASSIM: But why would you say they are reliable if they are not signed, there is nothing on these forms to tell us who filled it out on the different days, if there are different people and if they have this consistent row of ticks that go right to the end of the page, even if it is not the correct number of days in the month.

15**MR. DANIEL BUDA:** Up until today and before, there was no indication as to they should be signed.

ADV. ADILA HASSIM: But there are several factors and characteristics that I am referring to that emerged from these readings - that is the consistent ticks, the fact that they go right to the end of the line, even if there aren't that many days in the 20month and that there isn't any signatures. So there are several things that I am pointing out. Would you say they are not reliable? I accept what you have already

said about them not being a practice of signing. I am asking whether you would agree that it is not reliable.

MR. DANIEL BUDA: To me as long as they are relevant days in a month, they remain reliable to me.

5 **ADV. ADILA HASSIM:** So somebody could have filled in all of the boxes, ticked all of the boxes and provided you with the form at the end of the month, even though it hadn't been checked every day, you wouldn't know, is that so?

MR. DANIEL BUDA: This temperature checklist is not being removed up until the end of the year where they are placed. When I am checking them, I am going
10 directly to the screen where they are being placed, they are not being removed.

ADV. ADILA HASSIM: And you look at that every day?

MR. DANIEL BUDA: To be honest with you, not every day.

ADV. ADILA HASSIM: So it is possible that somebody will just tick for a week, if you hadn't seen it for a week, to just fill in after the fact.

15 **MR. DANIEL BUDA:** Not unless I am on leave, it doesn't happen that I attend to the mortuary three times a week.

ADV. ADILA HASSIM: Do you attend at the mortuary three times a week or not? Can you just clarify that?

MR. DANIEL BUDA: What I am saying is that there is no one that one can tick
20 them for a whole week. As a result that it doesn't happen that I fail to attend to the mortuary three times or more in a week.

ADV. ADILA HASSIM: So you do attend three times or more, is that correct?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And each time you look at the readings on the chart.

MR. DANIEL BUDA: I do look at the readings at the chart and this is not the only
5 checklist, there is also a toilet checklist.

ADV. ADILA HASSIM: Toilet checklists?

MR. DANIEL BUDA: Yes ma'am.

ADV. ADILA HASSIM: Ja, I actually have in mind those toilet checklists, because
at the back of the door of public toilets that are being serviced by a contractor, it will
10 have the date and then it will say who cleaned it and at what time. But this doesn't
have that detail, that level of information, would you agree?

MR. DANIEL BUDA: Exactly.

ADV. ADILA HASSIM: And are you saying that you checked the readings every
day or three times a week?

15 **MR. DANIEL BUDA:** What I do, because I am monitoring the mortuary services, in
case I arrive in the mortuary at around 7:30 or 9:00 and they are not ticked, I also
check from the screen and tick it myself.

ADV. ADILA HASSIM: So sometimes you tick it yourself if it is not done.

MR. DANIEL BUDA: Exactly.

20 **ADV. ADILA HASSIM:** And once the ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: But of course, Counsel, I know where we are going. The new mortuary is not an issue or is it?

ADV. ADILA HASSIM: It is an issue only to the extent that it helps us to understand the system that was being followed. For the purposes of these line of 5 questions, I am relying on the readings that are in the old mortuary reports, which is where Mr. Joseph Gumede was kept.

ARBITRATOR, JUSTICE MOSENEKE: It is August 2016, several months of that time, but I don't know... if there is no complaint about the new mortuary, you know, where are we going?

10 **ADV. ADILA HASSIM:** It is not... the relevance is this: The bodies that have been at Mamelodi Hospital for longer than three months, are moved off into the old mortuary. My question is whether the record keeping at the old mortuary, would have been as tight as the record keeping at the new mortuary.

ARBITRATOR, JUSTICE MOSENEKE: You see why I have difficulty with even the 15 relevance, Counsel, is this: The evidence is that body came there already bad and it was taken away and came back even worse. So the debate must be whether you can reverse decomposition by mere refrigeration. So I don't know how the... at least the new fridge, I don't know how questions about it will help at all. He doesn't deny that the body was decomposed when it came to him. So I don't know, we can 20 tax him for long ...intervened.

ADV. ADILA HASSIM: No, I don't wish to do that.

ARBITRATOR, JUSTICE MOSENEKE: But where are we actually going.

ADV. ADILA HASSIM: I don't wish to do that, but the evidence is that the body of Joseph Gumede was received in a decomposed state from Cullinan.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ADV. ADILA HASSIM: But according to the witness it was still a "full body" and then it left and returned and it was skin and bone and it may have... the question is about the period of time and how long it was in the old mortuary.

ARBITRATOR, JUSTICE MOSENEKE: Yes, I want to ask him questions, and I hope you will too, about... Because it (inaudible) suggest that the pathology division mortuaries are themselves in a (inaudible) state, because the decomposition went to near complete. It came back, the fluid was all out and it came back, on the evidence, as skin and bone.

ADV. ADILA HASSIM: Yes Justice. I do want to go ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I don't where that happened and it is relevant to that extent, but the new one does not take us anywhere.

15 **ADV. ADILA HASSIM:** The new mortuary?

ARBITRATOR, JUSTICE MOSENEKE: Ja.

ADV. ADILA HASSIM: Yes, I understand that, I am dealing with the old mortuary.

ARBITRATOR, JUSTICE MOSENEKE: Very well.

ADV. ADILA HASSIM: And my questions were directed at the reliability of the readings of these documents that are before us.

20

ARBITRATOR, JUSTICE MOSENEKE: Okay.

ADV. ADILA HASSIM: To the extent that we can rely on them at all or not. They have been provided by the witness and so it is open to me to question the reliability ...intervened.

5**ARBITRATOR, JUSTICE MOSENEKE:** Sure, absolutely.

ADV. ADILA HASSIM: The reliability of the readings. But I think I have made my... I have come to the end of my questioning on that.

ARBITRATOR, JUSTICE MOSENEKE: Well just before you close that chapter. You know, Mr. Buda, on some of the forms there are days where there are no ticks
10at all. Let me give an example. Go to page 6.

MR. DANIEL BUDA: I am there.

ARBITRATOR, JUSTICE MOSENEKE: I have seen another one... in other words on days other than weekends, go to page 11. There are questions along the same line as Counsel, and I'll stick to the old one. How do you explain that?

15**MR. DANIEL BUDA:** Where there are no ticks, one should be honest about that one to say that it is non-compliance. However, we also need to verify out of page 11 the last day of February 2016.

ARBITRATOR, JUSTICE MOSENEKE: Ja and the second thing is this that sits in the mind and probably sits in Counsel's mind is that your counterpart from Cullinan,
20it is a much smaller operation, you've got two big mortuaries and the sizes are large. He says he never kept any records like this. He says just never ever and he

started doing it after, very recently, he thought it would be prudent to do it. Did you ever talk to him about that record keeping when he said to you his mortuary is not working well, to use his language, he had challenges with his mortuary?

MR. DANIEL BUDA: No, I didn't, Justice.

5**ARBITRATOR, JUSTICE MOSENEKE:** And is it good practice not to keep daily record of readings when you run a mortuary?

MR. DANIEL BUDA: It is a very wrong practice, because even in terms of our national co-standard, checklists are supposed to be there.

ARBITRATOR, JUSTICE MOSENEKE: For every mortuary and every day?

10**MR. DANIEL BUDA:** Yes because that is contained from the questionnaire.

ARBITRATOR, JUSTICE MOSENEKE: And when you service your mortuary, do you do it on an emergency basis? I have seen a schedule of services here, they look to be quite regular?

MR. DANIEL BUDA: Regarding the servicing of the mortuary, that's the
15competency of our FMU and DID, I can't respond on that one.

ARBITRATOR, JUSTICE MOSENEKE: The Cullinan one was done on emergency basis, not once, but at least twice, if I remember well, with double rates of extra times and what else over weekends. Does it ever happen at your mortuary, to repair it that way?

20**MR. DANIEL BUDA:** Not to my knowledge, Justice.

ARBITRATOR, JUSTICE MOSENEKE: And you are using the same department for servicing mortuaries, isn't it? He also talked about, what is the acronym, F?

MR. DANIEL BUDA: FMU, Facility Management Unit, and DID.

ARBITRATOR, JUSTICE MOSENEKE: FMU. Ja, he also said it is FMU that is responsible for servicing his mortuary. They've never asked you to do things on an emergency basis, over weekends, overtime?

MR. DANIEL BUDA: I am not aware of that one, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. ADILA HASSIM: Thank you Justice. Your counterpart at Cullinan Mortuary denied that the deceased had come to Mr. Gumede had arrived decomposed. Are you aware that he denied it?

MR. DANIEL BUDA: I am now aware.

ADV. ADILA HASSIM: But your testimony is that you checked the body when it arrived the day after and it was decomposed.

15**MR. DANIEL BUDA:** Yes.

ADV. ADILA HASSIM: And according to ELAH52, which we were looking at a moment ago, the deceased was collected by forensic pathology services on 27 September 2016. Do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: So between the 16th of August and 27 September, it would have been in the old mortuary.

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And after the 15th of December when it was returned, 15 December 2016, and the time that it was collected on the 13th of February, it would have been in the old mortuary.

MR. DANIEL BUDA: Exactly.

ADV. ADILA HASSIM: For a period of about two months.

MR. DANIEL BUDA: Yes.

10 **ADV. ADILA HASSIM:** And you saw Joseph Gumede's body at that point, 13 February, when the family came to collect.

MR. DANIEL BUDA: Exactly.

ADV. ADILA HASSIM: You had not seen the body before when it arrived from the forensic pathology services on 15 December 2016, is that correct?

15 **MR. DANIEL BUDA:** Correct.

ADV. ADILA HASSIM: So you saw the body on the 17th of August 2016.

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And then you saw it again on 13 February.

MR. DANIEL BUDA: Yes correct.

ADV. ADILA HASSIM: Is that correct? Thank you. There is one ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: I am sorry, just before you move off, Counsel, it is relevant to that. Why wasn't the pauper funeral procedure followed?

MR. DANIEL BUDA: Because ...intervened.

5**ARBITRATOR, JUSTICE MOSENEKE:** I am just taking... I am not saying that it should have happened. From your evidence you keep people for three months and then you give them a pauper funeral. What were you told, why didn't you apply that rule in this case of Mr. Gumede?

MR. DANIEL BUDA: The case relating to the late Mr. Gumede, it wasn't our
10responsibility as there was a social worker involved and SAPS involved and the body was transferred to us. We used to pauper corpses that are unclaimed, who died in our hospital. Thanks Justice.

ARBITRATOR, JUSTICE MOSENEKE: Counsel.

ADV. ADILA HASSIM: Thank you Justice. Mr. Buda, I would like you to have
15regard to a particular file and that is file 11. And if you can turn to page 3898. In fact it would be easier if you turn to 3888. Are you there? 3888. You are there?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: This is an affidavit prepared by a forensic pathologist and it
is in relation to the post mortem of Charity Ratsotso. Charity died on 11 July 2016,
20for your information. And the place of death is recorded at Mamelodi. And this

document says that on the 28th of December 2016 at 13:30 in the afternoon, the body was identified to the pathologist, do you see that, at Mamelodi Hospital.

ARBITRATOR, JUSTICE MOSENEKE: I can't see that immediately, Counsel, help me.

5**ADV. ADILA HASSIM:** Justice ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: On page 3889?

ADV. ADILA HASSIM: 3888.

ARBITRATOR, JUSTICE MOSENEKE: Thank you.

ADV. ADILA HASSIM: It says: "I am a forensic officer. On 28 December 2016 at 1013:30"... and so on... "performance of my duties, I received the body at Mamelodi Hospital..." do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: Then 3889, the next page, is dated 29 December, so it is a day later and it is a report of the medical legal post mortem examination, do you see 15that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: And if you look at paragraph 4 it says that the chief post mortem findings made by me on this body were the following: "An elderly black male with signs of late decomposition, including post mortem fungal contamination 20of the skin and mummification of the body." Do you see that?

MR. DANIEL BUDA: Yes, I do.

ADV. ADILA HASSIM: So, it would appear that Charity Ratsotso was at Mamelodi Hospital and would have been in one of the mortuaries.

MR. DANIEL BUDA: Yes.

5**ADV. ADILA HASSIM:** And if he died in July, as he did, and the post mortem was conducted on the 28th of December 2016, is it likely that his body would have been in the old mortuary?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: And would it be normal for the body to decompose over 10that period of time if it was kept in a cold storage?

MR. DANIEL BUDA: It is likely.

ADV. ADILA HASSIM: It is likely?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: So the fact that it is kept in a mortuary does not delay 15decomposition.

MR. DANIEL BUDA: I don't get the question.

ADV. ADILA HASSIM: So if the body was in the mortuary, in the old mortuary for months before the post mortem was conducted, is it correct for us to draw from that that it would have decomposed in the old mortuary?

20**MR. DANIEL BUDA:** It is correct.

ADV. ADILA HASSIM: It is correct.

ARBITRATOR, JUSTICE MOSENEKE: Sorry, what is correct?

ADV. ADILA HASSIM: That the body would have decomposed.

ARBITRATOR, JUSTICE MOSENEKE: At 2 Degrees Celsius?

5**MR. DANIEL BUDA:** Yes, of course, because it spent months in a mortuary.

ARBITRATOR, JUSTICE MOSENEKE: What would be the point of 2 Degrees Celsius then?

MR. DANIEL BUDA: When you check the body, the fluids will no longer be there and that forms decomposition and the smell on top.

10**ADV. ADILA HASSIM:** So you are saying that that would take place, the smell and all of that, even if it is in a mortuary kept at 2 Degrees Celsius?

MR. DANIEL BUDA: Yes, of course. As I have indicated before, bodies that are in our new mortuary, immediately after three months they are removed to an old mortuary, because immediately after three months, we start feeling a bad smell
15from them.

ADV. ADILA HASSIM: You start?

MR. DANIEL BUDA: Feeling a very bad smell from them and then as a result we move them to our old mortuary to make our new mortuary user friendly.

ARBITRATOR, JUSTICE MOSENEKE: So what is the point of the whole exercise of these many pages here, which showed that the mortuary was working well, all the ticks of 2 Degrees Celsius, if in fact bodies decompose in the old mortuary?

MR. DANIEL BUDA: When bodies spend longer periods in the mortuary, they change. Because for an example, according to the manner in which we see these corpses in our mortuaries, the body that has been admitted within seven days, it looks normal. And then immediately after 21 days the body changes. And then beyond 30 days the changes are getting more and the condition of the body it changes further to an extent whereby where it is above six months, the body, what you'll see it will be the skin covering the bones.

ARBITRATOR, JUSTICE MOSENEKE: Even with refrigeration?

MR. DANIEL BUDA: Exactly Justice.

ADV. ADILA HASSIM: And so in the case of Joseph Gumede, when you saw the body the second time and it was skin and bone, you were not surprised.

15 **MR. DANIEL BUDA:** We were not surprised at all.

ADV. ADILA HASSIM: Then I must have misunderstood your earlier testimony. I thought that you were surprised that it was now skin and bones. But I accept that if you say you were not surprised. So this would be... so it was expected that Joseph Gumede's body would have been in that condition.

20 **MR. DANIEL BUDA:** As we usually see these bodies staying longer periods before paupering, that is what is happening.

ADV. ADILA HASSIM: And it would have been expected in the case of Charity Ratsotso that I have just referred to here, and the report of the pathologist saying that there was extreme decomposition, that would be normal.

MR. DANIEL BUDA: Yes.

5**ARBITRATOR, JUSTICE MOSENEKE:** But do you remember this particular body? Remember I asked you earlier whether anybody from Life Esidimeni had been kept there.

MR. DANIEL BUDA: Charity Ratsotso ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: Any other person?

10**MR. DANIEL BUDA:** Charity Ratsotso, Justice, was admitted in Mamelodi as an unknown person.

ADV. ADILA HASSIM: As an unknown person?

MR. DANIEL BUDA: Yes.

ARBITRATOR, JUSTICE MOSENEKE: And you remember that from your
15recollection.

MR. DANIEL BUDA: I do remember, because our mortuary clerk, Mr. Selepe, did present such a case to me.

ARBITRATOR, JUSTICE MOSENEKE: Did you get any explanation who brought her there or did any of the people from Cullinan talk to you about her?

MR. DANIEL BUDA: Nobody from Cullinan talked to me. Because what I can indicate is that we finally compiled a list of all patients who were admitted in Mamelodi from Cullinan. And the deceased you are talking about presently, is part of the list.

5 **ARBITRATOR, JUSTICE MOSENEKE:** So there was a list of people from Mamelodi?

MR. DANIEL BUDA: Yes.

ADV. ADILA HASSIM: Mr. Buda, I am sorry to put you through this, but in relation to Charity Ratsotso, there is a photograph of, there is several photographs, but I
10 would like to refer you to one photograph that was taken during the post mortem, and just to understand your earlier testimony correctly. And that is at page 3895. Do you see the state of decomposition?

MR. DANIEL BUDA: No and it is for the first time seeing this photograph.

ADV. ADILA HASSIM: It is for the first time that you've seen this photograph.

15 **MR. DANIEL BUDA:** Yes.

ADV. ADILA HASSIM: Is it consistent with the way that bodies will decompose during this period of time? When you say that the bodies were decomposed, let me rephrase it. When you say that bodies decompose at 2 Degrees Celsius, would it decompose to this extent?

20 **MR. DANIEL BUDA:** I don't think I will be able to respond to this one, because I can't see anything here.

ADV. ADILA HASSIM: Are page 3895?

MR. DANIEL BUDA: I am there.

ADV. ADILA HASSIM: Can you see that it is a photograph of part of the body?

MR. DANIEL BUDA: No.

5**ADV. ADILA HASSIM:** You can't recognise it.

MR. DANIEL BUDA: I can't recognise.

ADV. ADILA HASSIM: It doesn't look like anything to you, this picture.

MR. DANIEL BUDA: I am trying to look. No.

ADV. ADILA HASSIM: Could you look at page 3886?

10**MR. DANIEL BUDA:** I am there.

ADV. ADILA HASSIM: Does that look like anything to you?

MR. DANIEL BUDA: No.

ADV. ADILA HASSIM: It doesn't look like a decomposed part of a body.

MR. DANIEL BUDA: I cannot see anything here.

15**ARBITRATOR, JUSTICE MOSENEKE:** I am still startled by your evidence that refrigeration does not retard decomposition. I want you to think about this carefully. I don't know anything about it, but it just startles me. At universities they keep cadavers and they teach doctors to be using human cadaver – and I happened to be connected to Wits and the Medical School. They use human cadaver

sometimes for a whole year, a student would have a particular cadaver to understand the human body. If it dissipated after three months... I find that quite startling. I need help. At nearly freezing point, 2 Degrees and you said to us that you avoid it being lower, because the body will get frozen. Are you sure about what you are saying now?

MR. DANIEL BUDA: I am definitely sure. Because even officials from DID, that is what they indicated to us in terms of the temperatures of our fridge. And they also emphasised to say our mortuaries are not freezers but are cold rooms.

ARBITRATOR, JUSTICE MOSENEKE: But are you sure that after three months refrigeration will not retard decomposition?

MR. DANIEL BUDA: Maybe I don't understand the word retard.

ARBITRATOR, JUSTICE MOSENEKE: Will not hold, will not keep the body in short of decomposition.

INTERPRETER: Sorry Justice, I was just explaining to the witness what that word means in Zulu.

MR. DANIEL BUDA: ...Reply...

INTERPRETER: The witness is just explaining that they move the bodies, after three months they take the bodies from the new mortuary and they transfer them to the old mortuary, because they start decomposing at that stage. Even the families, they start to complain when they find their body that the corpse of their loved one, that it started to decompose.

ADV. ADILA HASSIM: Mr. Buda, how long have you been working in mortuary services?

MR. DANIEL BUDA: 1 April 2015 until to date.

ADV. ADILA HASSIM: And your duties are to supervise and to... can you just repeat? I know you did say earlier, but can you just tell us again what are your duties?

MR. DANIEL BUDA: To ensure the admission of corpses from the wards, to ensure the removal of the corpses, handing over them to families and undertakers and management of resources in the mortuary.

10 **ADV. ADILA HASSIM:** And do you usually examine the bodies in this process?

MR. DANIEL BUDA: No.

ADV. ADILA HASSIM: You don't usually look at the bodies, is that correct?

MR. DANIEL BUDA: Correct.

ADV. ADILA HASSIM: So you wouldn't have a very good sense of how the decomposition rate would work.

MR. DANIEL BUDA: Exactly.

ADV. ADILA HASSIM: Thank you, Mr. Buda, and thank you for performing that kind of service for us. It can't be an easy job, working in mortuary services. I have no further questions.

20 **ARBITRATOR, JUSTICE MOSENEKE:** Thank you.

MR. DANIEL BUDA: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Crouse.

ADV. LILLA CROUSE: Thank you, Justice, we don't have any questions for the witness.

5**ADV. DIRK GROENEWALD:** Thank you, Justice, we have no questions for the witness.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Ngutshana.

ADV. PATRICK NGUTSHANA: Thank you Justice Moseneke, we don't have questions as well.

10**ARBITRATOR, JUSTICE MOSENEKE:** The witness is yours.

ADV. TEBOGO HUTAMO: Thank you Justice. Mr. Buda, you have mentioned that the normal working condition of the refrigeration in the mortuary is from 2 to 8. Is that how I understood your evidence?

MR. DANIEL BUDA: You are correct sir.

15**ADV. TEBOGO HUTAMO:** Does refrigeration at that temperature stop decomposition of the body?

MR. DANIEL BUDA: I don't think I can be able to respond to that question. I think it needs expertise.

ADV. TEBOGO HUTAMO: And you have mentioned that the practice at the hospital is that you move those corpses which are more than three months in the new mortuary, to the old mortuary. What is the reason for that?

MR. DANIEL BUDA: Immediately after three months, we start feeling smell from such bodies, it is the reason why we are moving them to the old mortuary to avoid the bad smell. Because the waiting area in the new mortuary is very close to the refrigerator.

ADV. TEBOGO HUTAMO: Okay. You have mentioned that there was a list of patients who were admitted at the hospital, at Mamelodi Hospital from Cullinan, do you recall that?

MR. DANIEL BUDA: Yes, I do.

ADV. TEBOGO HUTAMO: And then you mentioned that Charity Ratsotso was amongst the patients on the list.

MR. DANIEL BUDA: Correct.

ADV. TEBOGO HUTAMO: And do I understand you to be saying that Charity Ratsotso was admitted at the hospital as a patient, not as a corpse.

MR. DANIEL BUDA: Correct.

ADV. TEBOGO HUTAMO: And which was the reason why he was kept at the hospital's mortuary.

MR. DANIEL BUDA: Correct.

ADV. TEBOGO HUTAMO: Thank you, Mr. Buda, there are no further questions.

MR. DANIEL BUDA: Thank you.

ARBITRATOR, JUSTICE MOSENEKE: So all and all you are really saying if we are unhappy with the decomposition, it should be because of the extended stay of the body in the mortuary?

5**MR. DANIEL BUDA:** Correct, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Well we don't derive joy out of this topic. I think we should ask whether there is anything else that you want to say.

MR. DANIEL BUDA: There is something but very few.

ARBITRATOR, JUSTICE MOSENEKE: Very well. Please go ahead.

10**MR. DANIEL BUDA:** I think in my capacity as Mr. Buda from Mamelodi Hospital, also on behalf of the Department, I would like to submit my sympathy to all families who lost their beloved ones. And immediately after this exercise, one also need to comment the exercise performed like today. One have noted that in terms of administration in our facilities, there is a gap that needs improvement. To indicate
15one, is the signatures relating to the mortuary fridges or cold room temperatures. I think that has been noted, and it will be receiving attention as from now. And one also need to indicate to the country that as public servants, we need to go back to our drawing boards and correct all the wrongs that are happening. Thanks Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Thank you very, very much. I
20thought you would have added that you hope in the future the social workers will work faster in identifying deceased people, isn't it so?

MR. DANIEL BUDA: Correct, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Here, if the bodies were identified timeously, then we wouldn't be having this difficult discussion, is it not so?

MR. DANIEL BUDA: Correct.

5**ARBITRATOR, JUSTICE MOSENEKE:** How can we do that, for you people in the mortuary to get details of the deceased faster?

MR. DANIEL BUDA: In response to that, we also need to draw the attention of our clerks at patient affairs, where patients are being admitted. Because at the mortuary we are the last ones who end up struggling with unknown corpses, for
10argument sake. Thanks Justice.

ARBITRATOR, JUSTICE MOSENEKE: Thank you. Well you are certainly. I would also like to join in and thank you for the work you are doing. I don't know if you have been watching, but that is one of the things that have always been worrying me about giving respect, even to those of us who are silent, not only those
15who are alive and sometimes powerful. But you have explained a number of things and I would like to thank you for coming here.

MR. DANIEL BUDA: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: And you are released. Thank you. You may leave. Thank you for the witness, Counsel. Where are we going now? Or
20should I turn to you, Adv. Crouse?

ADV. LILLA CROUSE: Justice, we can call another witness. The witness is Longiswa Victoria Banzi. My learned friend will lead the witness. The witness will testify in Xhosa, but she understands English completely. She just wants for the family sake that are listening, wants to hear her speak Xhosa. So the only translation must be done out of Xhosa to English for her. She will take the oath.

ARBITRATOR, JUSTICE MOSENEKE: Well the people in Port Elizabeth will be very proud to hear you pronounce Xhosa the way you do. You are doing it perfectly. Thank you. May she be called to take the stand? You may leave the stand. (Vernac).

10 **ME. LONGISWA VICTORIA NOMZIBANZI:** (Vernac).

ARBITRATOR, JUSTICE MOSENEKE: In which language do you want to testify?
I am told it is Xhosa?

ME. LONGISWA VICTORIA NOMZIBANZI: (Vernac).

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

15 **ADV. NZAME SKIBI:** Sorry Justice, I am told that the interpreter just went to the bathroom. He is coming. In the meantime I must just place my name on record.

ARBITRATOR, JUSTICE MOSENEKE: Yes, please do. Let's also get your... Yes, please do, continue, go ahead.

ADV. NZAME SKIBI: Thank you Justice. My name is Nzame, N Z A M E.
20 Surname Skiby, S K I B I. I see in one of the records it was recorded Y at the end.

ARBITRATOR, JUSTICE MOSENEKE: So I see, jay. It doesn't help, it comes very close to the illness called Skivi. So we have to be careful about that. Because we know that you are able to speak English. Will you put your full names on the record in the meantime?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** Okay, my name is Longiswa Victoria Nomzibanzi.

ARBITRATOR, JUSTICE MOSENEKE: Nomzibanzi. I am tempted to swear you in and the interpreter never arrives.

ME. LONGISWA VICTORIA NOMZIBANZI: That's fine. What I will do, Justice, I
10will speak in Xhosa and then also translate to English in the meantime.

ARBITRATOR, JUSTICE MOSENEKE: That is a nice facility to have. Do you swear that the evidence you are about to give will be the truth and nothing but the truth? And if so, I ask you to raise your right hand and say so help me God.

MR. DANIEL BUDA: So help me God.

15**ARBITRATOR, JUSTICE MOSENEKE:** Mr. Skibi.

ADV. NZAME SKIBI: Thank you Justice. Me. Banzi, where do you stay?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply... I am staying at 3033 Zachariah Crescent, Cosmo City, in Jo'burg.

ADV. NZAME SKIBI: Thank you. Do you have a family member who is a survivor
20in this Gauteng Marathon Project?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply... Yes, Counsel, I did have a family member. My family member is in Esidimeni in Waverly, Germiston.

ADV. NZAME SKIBI: What is his name, your family member?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply... My family member is 5Mkanyisele (Inaudible).

ARBITRATOR, JUSTICE MOSENEKE: Okay, welcome, welcome. Will you continue, please?

ADV. NZAME SKIBI: Thank you Justice. Mkanyisele, can he speak, can he talk?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** Yes, Mkanyisele can talk, but he can talk just one sentence at a time. But if you ask him questions, he won't be able to answer you.

ADV. NZAME SKIBI: Is he mobile? Can he walk by himself?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, he can walk.

15**ADV. NZAME SKIBI:** Yes, what was wrong with Mkanyisele or what is wrong? You say he is staying at Waverly now.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In order for me to not waste time, when Mkanyisele was six months, he was epileptic.

ME. LONGISWA VICTORIA NOMZIBANZI: And he was admitted in Cape Town at a Red Cross Hospital. (Vernac).

INTERPRETER: Mkanyisele was also admitted in Red Cross Hospital in Cape Town.

5**ARBITRATOR, JUSTICE MOSENEKE:** For the transcript, if you translate consistent, it is Xhosa, ma'am, and the interpreter must use English. You may switch over occasionally, but for us to stay free from schizophrenia, I think you should try and use the one language and you use the other. And if you want to fire her, just tell us and she will be fired.

10**ADV. NZAME SKIBI:** And he was admitted in Cape Town, when was that?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Mkanyisele was admitted at Red Cross since he was six months, because of his illness being epileptic.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

15**INTERPRETER:** The doctors there they assessed him up until he was moved or transferred, because he was of age or he was an adult.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: But he stayed there when he had the fits or when he was epileptic.

ADV. NZAME SKIBI: Was he institutionalised right throughout or was he hospitalised throughout? I want to move on. I know you want to state what is wrong with Mkanyisele, we appreciate that.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** He didn't stay that long in the hospital, it was just in and out and the doctors would assess him at that time.

ARBITRATOR, JUSTICE MOSENEKE: Could you peg a year when he was six months, how far back was that?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** Mkanyisele was born in the year 1974 in May.

ADV. NZAME SKIBI: After he had been in hospital, when he was about six months, and thereafter he was discharged, did he go to school?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Unfortunately, Counsel, Mkanyisele didn't go to school.

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Red Cross referred him to Pharmsa.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And then from Pharmsa, he was referred to Efata, it is a school in Umtata.

20**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Unfortunately he couldn't go to Efata, because my parents didn't approve of that.

ADV. NZAME SKIBI: Yes, ultimately he didn't go to school and then you are here now in Gauteng. When did you come to Gauteng, perhaps if you can move there?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: He came with my mother in the year 2012 to move to Gauteng.

ADV. NZAME SKIBI: When he was in Gauteng, how was his mental state or mental condition then?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** He is very hyperactive, he doesn't sit still and he was like that up until they moved to my place in Gauteng.

ADV. NZAME SKIBI: Did you take him to any hospital for medication after he came to Gauteng with his mother?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

15**INTERPRETER:** Yes, he went to the Randburg Clinic.

ADV. NZAME SKIBI: Yes, and then?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We asked the Randburg Clinic to refer us to a place of safety for him and at that time my mother was still alive.

ADV. NZAME SKIBI: Was he still suffering from epileptic fit or was there something else now, when he was in Gauteng?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, he was still epileptic when he came to Gauteng and he was still hyperactive, he couldn't sit still.

ADV. NZAME SKIBI: And then was there any place of safety which was found for him, ultimately then?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: The social worker by the name of Nico tried to find a place of safety, but unfortunately my mother died on the 27th of April.

ADV. NZAME SKIBI: Who looked after Mkanyisele after your mother passed on in 2014?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I was the one looking after Mkanyisele, but I myself was in and out of hospital and that is where the problem started.

ADV. NZAME SKIBI: What problem started?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I was injured when I was working at Multi Transco at Mnet.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: That accident affected my nerves.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I had to go to hospital so that I could do an operation for that.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: So I couldn't take care of my brother, Mkanyisele, hence I am
5saying he is a very hyperactive person.

ADV. NZAME SKIBI: And what did you do with Mkanyisele when you had some
problems regarding your injuries?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I had to hire many people to look after Mkanyisele, but
10unfortunately they couldn't stay because they were scared of him.

ADV. NZAME SKIBI: And then?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Up until Mkanyisele had a breakdown, because he was looking
for his mother and at that time my mother was already dead or had already passed
15on.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And then he became a danger to himself and the grandchildren.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We phoned the ambulance to come and take him.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: He was admitted in Helen Joseph.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In Ward 2.

5 **ADV. NZAME SKIBI:** And then how did he end up in Waverly? We just want to get there.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: From Helen Joseph he was transferred to Waverly. Unfortunately when he was admitted at Helen Joseph, he got injured in his leg.

10 **ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: So he can't speak. Up until today we don't know what happened to him.

ADV. NZAME SKIBI: And then Helen Joseph, did it refer him to Waverly? We want to get to know how did he get at Waverly?

15 **ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Yes Helen Joseph referred him to Waverly.

ADV. NZAME SKIBI: Was it in the year 2014?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes Counsel.

ADV. NZAME SKIBI: When he was at Waverly, is it one of the hospitals for Life Esidimeni, am I correct?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes Counsel.

5**ADV. NZAME SKIBI:** So when he was at Waverly, how was his condition then? Did it become worse or just tell us?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: His life improved because there they could take care of him, because he was a danger to himself. So at least when he was there, they could
10secure that he doesn't danger himself.

ADV. NZAME SKIBI: Was he taking any medication there? Do you know?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, he took the epileptic treatment or medication.

ADV. NZAME SKIBI: You said he was admitted in the year 2014. In 2015 around
15December, is there anything that happened there?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Every year at Year End they had a fun day.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In the year 2015 they gave forms for us to sign because Waverly
20was going to be closed.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In those forms we had to indicate if you can take care of your loved one. If you can't take care of your loved one, then you have to specify the reasons why.

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Then we filled out those forms and indicated that we can't take care of Mkanyisele because Mkanyisele is a danger to himself.

ADV. NZAME SKIBI: If you had to choose not to take Mkanyisele was there, what option was given? Where was he going to be taken to? Were you told as to where
10he was going to be transferred to, if the hospital is closing?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In December 2015 even the Government didn't know where they would place the patients. But they told us that they will inform us in a meeting that they were going to plan.

15**ADV. NZAME SKIBI:** Yes, did you become aware as to when Waverly was going to be closed?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In January, Waverly called a meeting and that meeting, MEC Qedani Mahlangu was present.

20**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Then she told us that Waverly was going to be closed because the contract between them and Life Esidimeni was coming to an end and they can't reissue another contract.

ADV. NZAME SKIBI: Yes, Me. Banzi, we heard the evidence of Mr. Peterson already as to what happened there. But is there anything that... did you have any contact with Me. Mahlangu during that day?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, the MEC was present, even though she was late, because she came round about 14:00 in the afternoon and many at that time had left.

10 **ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: At that time I was using crutches, but I hadn't done the operation yet at that time.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Something happened that really embarrassed me.

15 **ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: As I was going down the staircase I met this person by the name of Qedani Mahlangu.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I didn't know who she was that it was Qedani, because everybody was talking about her that we are still waiting for Qedani Mahlangu, but I didn't know who she was.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

5**INTERPRETER:** When you were saying that Qedani is not arriving, who were you saying those words to?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Unfortunately I was saying those words to Qedani herself.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

10**INTERPRETER:** What was her answer?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: She said sorry, ma'am, I am Qedani.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And she gave me her business card.

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Because she could see I was really embarrassed and she was also embarrassed as well.

ADV. NZAME SKIBI: Were you told as to when Mkanyisele was going to be moved from Waverly or transferred to another institution?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I got a SMS from my cell phone.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And the SMS said the contract was extended for another three 5months.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And then I got another SMS informing me that Mkanyisele is going to Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** I Googled the place Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I got the address and I went there.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: So I could see for myself how was the place.

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Then I saw what kind of a place it was.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because Mkanyisele is a danger to himself, when I saw the premises, I was satisfied with the premises, the Cullinan premises.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And then I went back and told them that I am satisfied with this place, Cullinan.

ARBITRATOR, JUSTICE MOSENEKE: Which place of Cullinan was he kept?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: He was kept in the side which is called Cullinan Centre, it was on the right hand side when you enter the place.

ADV. NZAME SKIBI: On the day when Mkanyisele was moved from Waverly to Cullinan, were you present on that day?

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: I was told that on that specific day they will transfer him to Cullinan, but I was told that I can only come on the weekend.

ADV. NZAME SKIBI: Did you go then on the weekend?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

15**INTERPRETER:** On that very same day, the social worker by the name of Daphne, called me.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And then she told me that Mkanyisele refuses to wear his shoes.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: They are experiencing that problem and it was already at night.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I asked Daphne to tell me Mkanyisele's features.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** Because I couldn't believe her when she said Mkanyisele says he doesn't want to wear shoes, because Mkanyisele can't even speak.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: The features that she gave me or illustrated to me.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** But she wasn't speak about Mkanyisele.

ADV. NZAME SKIBI: How do you know it was not Mkanyisele, the person whom he was talking about?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: The sentences he was using or she told me that he was using,
15were sentences that Mkanyisele can't even talk or pronounce.

ADV. NZAME SKIBI: Yes, what did you do after you were told that?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: She promised me that she will go back and look at him again and she will call me back and tell me if it really was Mkanyisele. And she did keep her promise and she called me and apologised that it was not Mkanyisele.

ADV. NZAME SKIBI: Then?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: We went there over the weekend to visit Mkanyisele.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: When we got there Mkanyisele was wearing a silk shirt.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** And he also had tracksuits, pants that were silk as well.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: But he wasn't wearing shoes.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Then we asked why is he not wearing shoes.

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: And they told us that Mkanyisele doesn't want to wear anything, he wants to wear clothes from Waverly.

ARBITRATOR, JUSTICE MOSENEKE: Were they given silk sweat suits in Waverly?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: No Justice, it was just normal clothing. They didn't have those clothes there.

ADV. NZAME SKIBI: How did he look? Was he neat?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: You could see at first glance when you look at Mkanyisele that he is a retarded person and he had mucus coming out of his nose at all times.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: He was very different from the person from Life Esidimeni. It was
10like they just took him from the streets.

ARBITRATOR, JUSTICE MOSENEKE: But I thought he was kept in the rehabilitation centre.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, Justice, it is correct.

15**ADV. NZAME SKIBI:** Did he have food? Did you know if he had eaten?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because he had already been there a week, we brought him food, but when he was eating he looked like he was someone who hasn't had food for a very long time.

20**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: When you would give Mkanyisele a piece of meat, he would even eat those bones.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: He couldn't sit still, he was shaking all the time and he couldn't sit down.

ADV. NZAME SKIBI: So how was his body? I understand he was there just for a few days because you only went on the weekend.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: You could see that he had lost weight.

10 **ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Even his appearance had changed from the appearance he had at Waverly.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We went where he was kept, meaning the wards of Cullinan Care.

15 **ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: And we asked them that it looks like Mkanyisele is not getting enough food.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And they said Mkanyisele doesn't want food.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And they said it looks like he always wants to go out, because he hasn't familiarised himself with the surroundings.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** It looked like they couldn't control him from what they told us.

ADV. NZAME SKIBI: During that weekend, did you manage to see his file? Were you shown his file?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because it was weekend, I couldn't see his file, but we did see
10where he was kept, even though they didn't want us to go in.

ADV. NZAME SKIBI: But what about medication? Because from your evidence you said at one stage there was this issue of misidentification, when you were called by Me. Ndhlovu.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

15**INTERPRETER:** After two weeks, Mkanyisele had a relapse and he had his fits or he was epileptic.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: What startled me was that they didn't know that he was epileptic.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

20**INTERPRETER:** So which means that he wasn't getting his epileptic medication.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And I asked him what kind of medication is he taking for his epilepsy.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** They said no he is not taking any medication of epilepsy, but they are just giving him pills to numb or to control his state.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I can confirm that they were indeed giving him something to numb him, because when you look at him, you would see that he is sleepy or drowsy.

10**ADV. NZAME SKIBI:** Did you ultimately see his file?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I called the social worker, Daphne.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And I asked for a meeting.

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: And indeed we had that meeting with Daphne.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: At that meeting we managed to open a new file for Mkanyisele.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And I told Daphne what was his mental condition.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And then Daphne promised that the doctor will come and assess him.

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: And they will try to contact Waverly to try and find out what kind of medication was he given.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: That was the end of our meeting with Daphne.

10**ADV. NZAME SKIBI:** Was it your second visit when you enquire as to what, when you were asked to be shown the file and it was then the issue of what medication he was getting?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: As I have said earlier on that we visited Mkanyisele on the 15weekend and I saw what he looked like. And on Monday I phoned Daphne so that we can arrange a meeting.

ADV. NZAME SKIBI: As you visited him subsequently from that weekend, how was his body weight? Did he seem happy there at Cullinan?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

20**INTERPRETER:** He looked like he was scared or afraid at Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: But it looked like he was lost. He looked like he was someone lost, because he was always sleep or drowsy.

ADV. NZAME SKIBI: Can you tell us about the incident which led him to be at Mamelodi Hospital for treatment?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: At Cullinan they phoned my cousin and they informed my cousin that Mkanyisele was admitted at Mamelodi Hospital.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: It looks like Mkanyisele had a problem on his shoulder, so he was scheduled to go to theatre for an operation.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We went to Mamelodi Hospital the following day.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I went there to sign the consent form.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: When I got there the operation was already done.

ADV. NZAME SKIBI: Sorry, when was this, in which month when he was at Mamelodi Hospital? If you cannot remember, you can just say.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Excuse me, Counsel, I can't remember the exact date, but I can check and come back to you.

ADV. NZAME SKIBI: Alright, thank you.

5**ARBITRATOR, JUSTICE MOSENEKE:** He would have been taken to Mamelodi in May 2016, isn't it?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: No Justice.

ARBITRATOR, JUSTICE MOSENEKE: When?

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: He got to Cullinan in May.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: May 2016, Justice.

ARBITRATOR, JUSTICE MOSENEKE: We are in agreement. So when was his
15operation in relation to his admission to Cullinan?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: It was during the month of August and September.

ARBITRATOR, JUSTICE MOSENEKE: Still in 2016?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes Justice, in 2016.

ADV. NZAME SKIBI: What was wrong with him when he was taken to Mamelodi then?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** He had a problem with his shoulder.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: They showed us the x-ray.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because I got there late, Counsel...

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Because I got there late, the operation that they did, instead of joining the joints, they did the bone manipulation.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And they said that they would observe him or keep him under
15observation to see that if his shoulder will be dislocated again.

ADV. NZAME SKIBI: Did you get any explanation as to what went wrong with his shoulder?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Unfortunately no one knew what happened.

ADV. NZAME SKIBI: Did you ask anyone?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, I did ask.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** Everyone kept on saying that no I wasn't on duty, but I will find out and come back to you.

ADV. NZAME SKIBI: So ultimately from Mamelodi Hospital, was he transferred back to Cullinan or what?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** Yes, from Mamelodi Hospital he was transferred back to Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: But we still had a problem that they don't clothe him properly and he also doesn't want shoes or refuse to have shoes on.

ADV. NZAME SKIBI: Right. At Cullinan you... just before I proceed there. You
15heard the evidence of Dr Manamela that they offered some transport for families to can be able to visit their loved ones who was transferred from Life Esidimeni Hospital. Was there any transport offered to you?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: No transportation was provided, we used our own cars.

ADV. NZAME SKIBI: How did it affect you when he was transferred further away from home, because Waverly is in Germiston and then he was transferred to Cullinan?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** Justice, it really affected me because at the moment I am medically boarded at work.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: When Mkanyisele was in Cullinan, I was hospitalised as well.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** We couldn't see Mkanyisele for three months.

ME. LONGISWA VICTORIA NOMZIBANZI: While I was in hospital.

INTERPRETER: While I was in hospital.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Then I recovered and I gained my health.

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: We visited Mkanyisele from time to time.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: But we needed to budget for those visits.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because if you can see the distance or imagine the distance from Cosmo City next to North Gate to Cullinan, it is quite a distance.

ADV. NZAME SKIBI: Were you using your own family transport or public transport, when you visited Mkanyisele?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: We were using our car.

ADV. NZAME SKIBI: More or less how much did you spend, more or less, when you used to visit Mkanyisele at Cullinan?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** It was R600.

ADV. NZAME SKIBI: Per trip or was it the total?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We used R600 to and fro or per trip.

ADV. NZAME SKIBI: More or less how many trips did you take when he was still at Cullinan? If you can't then it is fine, then we can move on.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Unfortunately, Counsel, I can't estimate at this time.

ADV. NZAME SKIBI: Mkanyisele is now back at... or where is he now?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: The Department of Health phoned us.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And they asked us if we want to move Mkanyisele from Cullinan back to Life Esidimeni.

5**ADV. NZAME SKIBI:** When was it when you were called, when you received the call from Health Department, was it in 2017 or...?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes, it was in 2017.

ADV. NZAME SKIBI: In which month?

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: I am not sure. I can always check the dates, but it was around March.

ARBITRATOR, JUSTICE MOSENEKE: And throughout the time he remained at Cullinan, did he?

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Yes Justice, that is correct.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Justice, the time he was in Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Daphne, the social worker...

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: She told me that there is a possibility that Mkanyisele might be moved to a NGO.

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: Because Mkanyisele can walk.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because in Esidimeni there are people who can't walk.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

10**INTERPRETER:** But I pleaded with her not to take Mkanyisele away from Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Until he was moved from Cullinan but he was not transferred to a NGO.

ADV. NZAME SKIBI: Where is he now?

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: He is now in Waverly.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: In Esidimeni.

ADV. NZAME SKIBI: I just want to take you back a little bit, just to clarify something. When you were told that Life Esidimeni is going to be closed at this Waverly, were you told what type of facility that he is going to get, whether he is going to get medical treatment and whether he will be properly taken care of?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: They said they would take good care of Mkanyisele, especially when they talked about the security of Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because Mkanyisele could walk.

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: And they could see that Mkanyisele can't danger himself.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: But I told them that Mkanyisele can put himself in danger or endanger himself, because he can't speak or talk.

15**ADV. NZAME SKIBI:** Did he get better treatment and care after he was moved from Life Esidimeni to Cullinan?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: When Mkanyisele was in Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

20**INTERPRETER:** When I was discharged from hospital.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We went to visit him, it was on a Sunday.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: We went there as the family, the whole family.

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: And we told them that we want to spend more time with Mkanyisele.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because I was absent for three months.

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: We went to the waiting room.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And they said they will go and prepare... they said we must wait in the waiting room, because they were busy preparing a place so we could go and
15spend time with him. That place was called Nkandla.

ARBITRATOR, JUSTICE MOSENEKE: Where is that?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: It is a place in Cullinan, Justice.

ARBITRATOR, JUSTICE MOSENEKE: Was it a place to keep patients?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Justice, if you know Cullinan, it is an open veld, it looks like it is a braai'ing area which has braai facilities.

ME. LONGISWA VICTORIA NOMZIBANZI: With thatch roofs. ...Reply...

5**INTERPRETER:** It has thatched roofs.

ARBITRATOR, JUSTICE MOSENEKE: How many?

ME. LONGISWA VICTORIA NOMZIBANZI: I think it is like about maybe three or four. But it is designed, Justice... (vernac).

ARBITRATOR, JUSTICE MOSENEKE: I see

10**INTERPRETER:** It has about three or four thatch roofs. It was designed as a recreational area.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: They brought Mkanyisele to us.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

15**INTERPRETER:** We couldn't stay with Mkanyisele, not even 30 minutes.

ADV. NZAME SKIBI: Why? Why you didn't stay with him for even 30 minutes, what was wrong?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: He couldn't sit with us.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: The food that we brought for him.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: He just wanted that food only.

5**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: The way he wanted the food, he was if he was demanding or he was a bit aggressive.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: There were times where I would run away because he wanted to
10grab anything that you were holding.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: So as a result, we couldn't spend much time that we desired.

ARBITRATOR, JUSTICE MOSENEKE: Why is that? Okay put it the other way
around, does he do that when he is on medication?

15**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: He does that when he is very hungry.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: He has no patience he can't wait.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Because he can't say that I am hungry.

ADV. NZAME SKIBI: If he received medication, can eh behave in that manner?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: No, when he has his medication he doesn't behave like that. And it was still early in the morning, it wasn't even evening.

ADV. NZAME SKIBI: What do you want to get out of this process, for the better life of Mkanyisele and other survivors of the Gauteng Marathon Project?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I went to Cullinan when he was going to be transferred from Waverly to Cullinan, I went to inspect the place.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And I saw the mode of transport they were going to use.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And I ensured that he got to Waverly when he was transferred from Cullinan to Waverly.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And I went to inspect the rooms that they were going to live in.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: The problem that I have with our government.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I don't know whether they have a contract with Waverly Esidimeni.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** If it is indeed a contract, when is the contract going to end?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: And what will happen when that contract ends?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: That is my only problem.

10**ARBITRATOR, JUSTICE MOSENEKE:** You are really asking whether there will be a repeat of the Marathon Project one day.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Yes Justice

ARBITRATOR, JUSTICE MOSENEKE: And you want to see a repeat of the
15Marathon Project.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: I don't even want to see that Gauteng Marathon Project, Justice.

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: Justice, this Marathon Project affected our marriages, our children and our families at large.

ARBITRATOR, JUSTICE MOSENEKE: How old is Mkanyisele now?

ME. LONGISWA VICTORIA NOMZIBANZI: He is 43 years old. He was born in 5the year 1974.

ARBITRATOR, JUSTICE MOSENEKE: Has he ever married?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

INTERPRETER: No Justice.

ARBITRATOR, JUSTICE MOSENEKE: And he has no children of his own.

10**ME. LONGISWA VICTORIA NOMZIBANZI:** ...Reply...

INTERPRETER: No Justice, he doesn't have any children. He can only say who are you and he will tell you who he is – that's it.

ADV. NZAME SKIBI: For closure or equitable redress, what would you want to be... what would you recommend should be done?

15**ME. LONGISWA VICTORIA NOMZIBANZI:** I've got a proposal.

INTERPRETER: I have a proposal.

ME. LONGISWA VICTORIA NOMZIBANZI: I've got a comment.

INTERPRETER: I have a comment.

ME. LONGISWA VICTORIA NOMZIBANZI: I've got an expectation.

INTERPRETER: I also have an expectation.

ADV. NZAME SKIBI: You are both speaking English or do you now want to say it in English?

ME. LONGISWA VICTORIA NOMZIBANZI: ...Reply...

5**INTERPRETER:** I am sorry Justice.

ARBITRATOR, JUSTICE MOSENEKE: Do you want to speak in English now?

ME. LONGISWA VICTORIA NOMZIBANZI: Yes Justice.

INTERPRETER: Yes Justice.

ME. LONGISWA VICTORIA NOMZIBANZI: My proposal is as follows: I would like
10the churches, the society, the traditional leaders, the politicians, the use to come
together, we'll sit down and talk about the mentally disturbed people a place for
them where they can stay without being moved from one place to another.

ARBITRATOR, JUSTICE MOSENEKE: And a purse for them or a place?

ME. LONGISWA VICTORIA NOMZIBANZI: A place for them.

15**ARBITRATOR, JUSTICE MOSENEKE:** A place, okay.

ME. LONGISWA VICTORIA NOMZIBANZI: That is my proposal.

ARBITRATOR, JUSTICE MOSENEKE: And will this be privately run by civil
society?

ME. LONGISWA VICTORIA NOMZIBANZI: It must be run by the government, but
20civil society must take part, which means then they must be included or invited. And

one way or another, somewhere somehow people thought they don't know really the life of having a mentally disturbed person. Sometimes it is easy to say the society must learn to live with them, because they don't know. The mentally retarded or disturbed patient, they cannot be the bridge to teach other people. We cannot use them to teach, because they do feel the pain, the only thing is they can't talk. My comment: It is unfortunate that we can sing a song that we used to sing before 1994 that says (vernac). I thought this song was buried before 1994. The more hurting part it is when somebody else have to sing on behalf of somebody that is voiceless that can't even sing the song. Some of the people, they did sing the song before, Justice, along the way, along the way, Justice. Power. (Vernac).

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

INTERPRETER: They sang the song before ...intervened.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac).

INTERPRETER: They sang the song before, but they had fallen and now when they have fallen, they expect the mentally ill people or people who can't sing this song.

ME. LONGISWA VICTORIA NOMZIBANZI: Who maybe some of them used to sing the song... but unfortunately the fallen... and also didn't expect that that song ever, somebody sang on behalf of them.

ARBITRATOR, JUSTICE MOSENEKE: Yes.

ME. LONGISWA VICTORIA NOMZIBANZI: That is my plea and my disappointment. 143 mentally disturbed patients died, Justice. Some of them they couldn't even say no, because they can't speak. But today we have to prove that somebody was wrong, when we now or that person now accept that he/she was wrong. I wish never again in South Africa that a mentally disturbed person, suffer because of the budget – if it was really the budget. But if this budget can affect 143 people... I am even imagining myself what happened to the (inaudible), did they say we've got this girl and we've got this list... which one we must take that we can be able to budget? Maybe somebody said only those that can't talk, take them. And someone says okay comrade, let's go for it. It must not happen again. Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: (Vernac). Counsel.

ADV. NZAME SKIBI: Thank you Justice.

ARBITRATOR, JUSTICE MOSENEKE: Are you done?

15 **ADV. NZAME SKIBI:** I am done Justice.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Hassim?

ADV. ADILA HASSIM: Justice, I don't have any questions for this witness. I would just like to thank Me. Banzi for making the time to speak to us at these proceedings.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Groenewald?

20 **ADV. DIRK GROENEWALD:** Thank you, Justice, we have no questions for the witness.

ARBITRATOR, JUSTICE MOSENEKE: Adv. Ngutshana.

ADV. PATRICK NGUTSHANA: No questions, Justice Moseneke.

ARBITRATOR, JUSTICE MOSENEKE: Counsel for the State?

ADV. TEBOGO HUTAMO: Thank you Justice. Good afternoon Me. Banzi.

5**ME. LONGISWA VICTORIA NOMZIBANZI:** Good afternoon Counsel.

ADV. TEBOGO HUTAMO: What is your relationship with Mkanyisele?

ME. LONGISWA VICTORIA NOMZIBANZI: Mkanyisele is my youngest brother.

ADV. TEBOGO HUTAMO: We have heard your count of the manner in which he was moved from Waverly in Germiston to Cullinan and how he was treated at
10Cullinan.

ME. LONGISWA VICTORIA NOMZIBANZI: Yes Counsel.

ADV. TEBOGO HUTAMO: And you've just mentioned that after all things having happened in this project, he has now been returned to Life Esidimeni in Waverly. Is that correct?

15**ME. LONGISWA VICTORIA NOMZIBANZI:** Yes Counsel, correct.

ADV. TEBOGO HUTAMO: How has been the situation so far after his return to Waverly?

ME. LONGISWA VICTORIA NOMZIBANZI: Counsel, he is fine. I can show you the photo of the day when he arrived at Esidimeni and a recent photo, there is a big
20difference.

ADV. TEBOGO HUTAMO: So the conditions have improved.

ME. LONGISWA VICTORIA NOMZIBANZI: Yes Counsel.

ADV. TEBOGO HUTAMO: In comparison to... Sorry Justice, I thought there was someone who wanted to say a word.

5**ARBITRATOR, JUSTICE MOSENEKE:** I don't see that.

ADV. TEBOGO HUTAMO: Okay thank you. You have just said that the condition has now improved.

ME. LONGISWA VICTORIA NOMZIBANZI: Yes Counsel.

ADV. TEBOGO HUTAMO: We just want to regret the position in which Mkanyisele
10was put through with regard to the movement, which appears to have been unnecessary in the circumstances. And from the plea that you have made that there should not be a repeat of what occurred, I just want to say that the government has learned quite a lot, although it is quite unfortunate of what had actually occurred, but the government is taking effort to try and ensure that the
15interest of all mental health care users are being catered for and their rights are protected. And we just wanted to thank you for coming through to share with us your own experience in relation to the movement and we thank you for sharing with us your ideas of how the situation should be improved. And it is indeed a joint effort by all involved that their interest have to be protected. And we just want to thank
20you for sharing your experience with us. And Justice, there are no further questions to the witness.

ME. LONGISWA VICTORIA NOMZIBANZI: You are welcome. Thank you.

ARBITRATOR, JUSTICE MOSENEKE: Thank you Counsel. (Vernac).

INTERPRETER: I know you have said your peace, unless you want to say something more?

5**ME. LONGISWA VICTORIA NOMZIBANZI:** No Justice.

INTERPRETER: No Justice.

ARBITRATOR, JUSTICE MOSENEKE: Well I wish you well. But more importantly I wish Mkanyisele well. I hope he finds peace and he is a young man and he has got some way to go. And we will see when we get to the final stages of this
10process, what would be appropriate ways to meet some of the suggestions you have made. In all of this you have said nothing about money, but also money helps. And I understand why most people will come here and hardly talk about money. But money and disability are important things and they intersect somewhere.

ME. LONGISWA VICTORIA NOMZIBANZI: Yes, Justice, I understand.

15**ARBITRATOR, JUSTICE MOSENEKE:** Money can make managing disability less onerous than otherwise. But I want to join the others in thanking you for coming here and giving us this difficult tale of a very vulnerable person. (Vernac). You may leave the witness stand. Tomorrow. It is 17:00. Adv. Crouse.

ADV. LILLA CROUSE: We are ready to proceed tomorrow with some witnesses,
20Justice.

ARBITRATOR, JUSTICE MOSENEKE: And the program for tomorrow will be your witnesses, mainly your witnesses.

ADV. LILLA CROUSE: As far as I have it, yes Justice.

ARBITRATOR, JUSTICE MOSENEKE: Okay very well. We are going to adjourn now until tomorrow morning at 9:30. Thanks.

END OF SESSION 3